

Saharawi Arab Democratic Republic

(Western Sahara)



Briefing Document

May 2002

Kamal Fadel
Polisario Representative
PO Box 291
Sydney, 2037
Australia



For Further Information:

www.arso.org

www.wsahara.net

No free man shall be taken or imprisoned or dispossessed, or outlawed or exiled, or in any way destroyed, nor will we go upon him, nor will we send against him except by the lawful judgment of his peers or by the law of the land. (39)

To no man will we sell, or deny, or delay right or justice (40)

Magna Carta (1215 AD)
Foundation of English Law and de facto UK Constitution

Overview

This briefing document summarises the key factors behind the decolonisation process of the former Spanish colony of Western Sahara, and presents the basis for the belief and commitment of the indigenous Saharawi population to be granted their basic right to self-determination.

The Saharawi Arab Democratic Republic (SADR) was proclaimed by the indigenous people of the territory of Western Sahara on 27th of February 1976. The SADR is a full member of the African Union and is recognised internationally by 76 countries.

Western Sahara is regarded by the United Nations (UN) to be a non-self governing territory. Since 1976 Morocco has illegally occupied Western Sahara and has frustrated the rights of the Saharawi people to self-determination.

The key factors behind the current dispute can be summarised as follows:

1. The Saharawi people and their ancestors have lived and ruled Western Sahara since at least the first century BC.
2. The Saharawi people have their own distinct ethnic, cultural and linguistic characteristics.
3. Western Sahara has never been a part of the Kingdom of Morocco nor have the Saharawi people ever acknowledged Moroccan sovereignty.
4. The end of Spanish colonisation (1884 to 1975) was marked by the illegal partition of the territory between Morocco and Mauritania. This partition was in contravention to previous Spanish commitments to comply with UN Decolonisation procedures (to include a referendum on self-determination by the indigenous population).
5. The International Court of Justice (ICJ) examined Moroccan and Mauritanian claims concerning sovereignty over the Territory in 1975 and concluded 'that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity'. The court did not find legal ties of such a nature as might affect the decolonisation of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory. The ICJ decision was a clear rejection of the Moroccan and Mauritanian claims of sovereignty over Western Sahara.
6. Morocco and Mauritania occupied the territory by military force in 1976. This action was immediately deplored by the UN.
7. The Saharawi population, through the Polisario Liberation movement, organised an effective military resistance to this illegal annexation. Mauritania withdrew all claims to the territory in 1979 and recognised the SADR as the legitimate governing authority of the Territory.
8. Following a prolonged military conflict, the UN brokered a Settlement Plan to resolve the conflict in 1991. The conflict over sovereignty was agreed by both parties to be resolved through a UN organised referendum of the indigenous population.
9. Repeated Moroccan interference and objections to the work of the UN in establishing an electoral roll, has effectively delayed this referendum. Several UN diplomats resigned during this process citing unacceptable Moroccan interference in all aspects of the UN work. The UN issued a provisional list of eligible voters (86,000) in February 2000. Morocco has subsequently filed 131,000 appeals.
10. An alternative Moroccan initiative was proposed in 2001 (the framework plan). This alternative provides for pseudo-autonomy for the Territory as part of the Kingdom of Morocco. This alternative does not

provide for self-determination and is thus totally unacceptable to the Saharawi people and wasn't supported by the Security Council.

11. In February 2002, The UN Secretary General's Special Envoy, Mr. James Baker proposed to the Security Council four options: to organise the referendum, to implement a reviewed "Draft Framework Agreement", to partition the Territory between Morocco and the SADR or to withdraw the UN mission.

The political situation is as stark as the situation the Saharawi refugees have faced for the last 27 years. A referendum on self-determination is the moral right of the indigenous population, and one that is enshrined in the charter of the UN.

The willingness of the Security Council to support self-determination for the people of East Timor and to ignore it in the case of Western Sahara is inconsistent. It is morally unacceptable for the rights of the Saharawi people to be sacrificed through a lack of UN will.

Saharawi Arab Democratic Republic (Western Sahara)

Background Briefing Document

Contents

	Page
1.0 Location.....	2
2.0 Population.....	2
3.0 Geography.....	2
4.0 Settlement and Resources.....	3
5.0 People.....	3
6.0 History and Culture.....	3
7.0 Colonial History.....	5
8.0 Political Structure.....	6
9.0 Refugee Camps.....	8
10.0 Saharawi Women.....	9
11.0 Education.....	9
12.0 Commerce.....	9
13.0 Human Rights.....	10
14.0 United Nations.....	10
14.1 UN Decolonisation Program.....	10
14.2 International Court of Justice.....	11
14.3 Referendum.....	11
14.4 Framework Agreement (Baker Plan).....	12
14.5 Recent Developments.....	13

Appendix

ICJ, Western Sahara, Advisory Opinion of 16 October 1975	1
Proclamation of the First Government of the Saharawi Arab Democratic Republic, Bir Lahlou, 27 February 1976	2
UN Security Council Resolutions: 690/725 (1991)	3
Congress of the United States, Review of United Nations Operations and Peacekeeping, 25 January 1995	4
UN Security Council, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, 12 February 2002	5
UN Security Council, Report of the Secretary-General on the situation concerning Western Sahara, 19 February 2002	6
UN News Centre: Security Council extends mandate of UN's Western Sahara Mission Through July. 30 April (2002)	7

1.0 Location

The territory known as Western Sahara lies in NW Africa, straddling the Tropic of Cancer, and bordered by the states of Mauritania, Algeria, Morocco and the Canary Island archipelago (Spain). The current boundaries of the territory are the result of colonial treaties between France and Spain signed in 1900, 1904 and 1912.

2.0 Population

In 1974, the Spanish administration of 'Spanish Sahara' conducted a population census in preparation for a post-colonial referendum. This census recorded 74,000 indigenous inhabitants. In 1997 Western Sahara was estimated to be inhabited by 200,000 Moroccan settlers from the post-1975 period, 200,000 soldiers of the Moroccan army (FAR) and greater than 65,000 indigenous Saharawi. In addition, approximately 180,000 Saharawi refugees are currently based in camps in southwest Algeria. The most recent (2001) US Government figures estimate 250,559 civilian inhabitants within the territory.

The vast majority of the Saharawi population are concentrated in the north of the Moroccan-occupied zone or are in the refugee camps in southern Algeria.

3.0 Geography

Western Sahara consists of two provinces: Saguia el-Hamra in the north and Rio de Oro (also referred to as Wadi ed Dahab) in the south. The territory covers an area of 284,000 sq km and is thus one-tenth the size of Algeria, half the size of France and slightly larger than the United Kingdom.

The topography of most of the territory is made up of plains with some small plateaus that reach maximum elevations of approximately 400 metres. The territory has no permanent surface water and is particularly vulnerable to drought. On the whole, Western Sahara can be sub-divided into three clear geographical/topographical regions:

- i) A northeast zone from the Atlas mountain chain to the hills of Zemmour, comprising a rocky desert (hamada) with steep mountains and pronounced relief with few scattered water wells.
- ii) A northern river zone that includes Wadi Draa to the north and the Jat to the west. These wadis have been created by ephemeral rivers formed during the brief rainy seasons that occur during autumn. Because of the high temperatures this water quickly evaporates and never reaches the sea. In this river zone flows the Saguia el-Hamra (the Red Canal) whose importance lends its name to the region. Sufficient vegetation for grazing grows along the banks of the Canal, and at Smara barley and corn are cultivated.
- iii) The southern zone, the Rio de Oro, consists of flat plains, ergs and sand dunes. The ground is too permeable to retain the autumn waters and too flat to allow surface flow, hence water accumulates in the subsurface. Numerous wells and waterholes tap these underground reservoirs. The inland landscape is quite monotonous and along the coast this monotony is broken only by the peninsulas of Dakhla (ex-Villa Cisneros) and Guera.

Inland, the climate is continental with cold, dry winters while summers are extremely hot with temperatures that can exceed 50 degrees Celsius. Cold offshore air currents produce heavy coastal fog, mist and dew. A widespread harmattan haze exists 60% of the time, often severely restricting visibility. Dakhla receives a yearly average rainfall of only 45 millimetres. A hot, dry, dust/sand-laden sirocco wind can occur during winter and spring. Varied types of vegetation are found in areas of coastal humidity, however inland flora is, apart from luxuriant growth around oases, sparse and typical of the steppe and desert.

4.0 Settlement and Resources

The capital of the Territory is Laayoune (otherwise known as El Aaiun), whose current total population (civilian and military) is estimated by the US Government as ranging between 145,000 and 250,000. The other key settlements are Dakhla, which is situated to the south on the coast and is the principal port, and the holy city of Smara. The main resources of the Territory are the phosphate deposits at Bou Craa, rich offshore fishing grounds and iron ore deposits

5.0 People

Because of low, irregular rainfall, Western Sahara has throughout history been inhabited by nomadic tribes who have lived by pasturing animals and growing crops where possible. Nomadic tribes move across the desert on more or less regular routes, dictated by seasons, wells and the availability of pasture. These tribes were originally known as the 'ahel es-Sahel', the people of the littoral or Atlantic Sahara, and are now known as Saharawis.

The Saharawi people are the indigenous population of Western Sahara and are the direct descendants of desert nomads that themselves derive from an earlier fusion of Berber (Sanhaja/Zenata) and Yemeni Arab (Maqil) tribes. The Maqil, who migrated into Western Sahara in the Thirteenth Century, brought with them the Arabic dialect today known as Hassaniya, which progressively replaced the previously dominant Berber tongue. Today, the Saharawi people all speak Hassaniya and are ethnically and culturally distinct from populations around them.

The Saharawis are members of the Sunni branch of the Islamic faith, with governing law based both on custom and the Koran. Saharawi society is strongly based on a structure formed around the Saharan tribes, and has developed certain distinctive and unique characteristics. Unlike surrounding countries that were governed either by hereditary monarchs or dominated by the strongest tribal faction, Saharawi society has been governed by the ait arbain ('Council of Forty'), with members of the Council equally representing each of the Saharawi tribes. The Council would routinely meet to discuss the affairs of the population and in times of war or crisis. Each Saharawi tribe is further divided into smaller groupings with a high degree of autonomy, and which are led by tribal elders, or sheikhs. The Sheikh, who may be nominated or elected, traditionally presides over ceremonies such as weddings or funerals, acts as counsellor to his people, and keeps records of them. Saharawi tribal society was organised to such an extent that the Saharawi Assembly appointed official representatives to neighbouring entities in Algeria, Morocco and Mauritania.

6.0 History and Culture

People have been resident in the area now referred to as the Sahara for the past 10,000 years. Ancient rock paintings and artefacts indicate that up until 3000 BC the Sahara region enjoyed a temperate climate, and supported buffalo, elephants, giraffes and, after 6000 BC, the widespread grazing of domestic cattle. From 3000 BC to 1000 AD, with global climatic change, the Sahara region progressively became a desert, and the indigenous people were forced to adopt a nomadic way of life.

Around 1000 BC the Sanhaja Berbers migrated into the area of North West Africa now known as Western Sahara, to be subsequently joined by a separate Berber tribe known as the Zenata. Collectively these tribes were known as the Bafour.

The Roman Empire destroyed Carthage (Tunisia) in 149 BC, and in 44 AD annexed the adjoining northwest mediterranean coastal territory (Morocco) as the Roman province of 'Mauretania', however did not extend their dominion to Western Sahara. In the Fifth Century AD, and in association with the

wider fall of the Roman Empire, this Roman province was subjected to repeated Berber attack from the Sahara.

Following the death of the prophet Mohammed in 632 AD, Muslim Arabs expanded westwards into Egypt and then Libya (Cyrenaica). Although the Berber tribes initially halted this advance, fortresses were constructed to secure Arab territorial gains and eventually the Maghreb region was conquered. Both the Zenata and the Sanhaja desert tribes fiercely rejected this Arab expansion; but nevertheless embraced the moral, religious and cultural precepts of Islam. In 711 AD, Arab forces crossed into Spain and advanced through Spain and France until defeated at the Battle of Poitiers (732 AD). The Arab forces then consolidated their hold on Spain, establishing a Caliphate in Cordoba. Under the Umayyad dynasty (756 –1031 AD), the Caliphate became a significant regional power, with Cordoba becoming the most significant European city west of Constantinople by the late Eighth Century.

In the Tenth Century the remaining Arab Kingdoms in Morocco and Algeria came under increasing attack as desert Berber tribes advanced northwards. Islamic religious reform movements united the Saharan population; a unity that culminated when a confederation of tribes, 'the veiled Sanhaja', formed the Almoravid state (1056 – 1147 AD). Almoravid forces conducted extensive military campaigns throughout northern Africa, which included conquering Morocco and the Kingdom of Ghana (Mali). At this point the Almoravid dynasty split, with one faction returning south to the desert while the other crossed the Mediterranean in 1069 and invaded Andalusia. By 1110 AD all Muslim Spain was united under Almoravid rule. Reconquest of the Iberian Peninsula by Christian forces commenced shortly thereafter, with much of the region regained by the end of the Thirteenth Century. The last remaining Muslim kingdom (Grenada) was conquered by Christian forces in 1492 AD.

A subsequent Berber-led religious reform movement led to the creation of the Almohad dynasty (1130-1269 AD) in the Maghreb, which was subsequently succeeded by the Hafsid state (1228-1574) in the east, and the Marinid state (1196-1465 AD) in the west. At the end of the Thirteenth Century, as both Muslim Spain and the Almohad dynasty in the eastern Maghreb were in decline, an Arab Yemenite people known as the Maqil migrated into Western Sahara. The fusion of the Maqil and the Sanhaja tribes gave rise to a new ethnic group with a distinctive political and cultural identity: the Moors. Further migrations of people into Western Sahara were from this point fiercely resisted by resident Moorish tribes.

The North West African coastline was mapped by the Portuguese as a pretext to colonial expansion commencing in 1434 AD. In 1578 AD a Moroccan army inflicted a decisive defeat on Portuguese expeditionary forces at Al-Kasr Al-Kabir. Morocco subsequently remained an independent sultanate under the Saadis (1511-1649 AD) and then Alawis (1666AD–present) dynasties.

In 1590 AD, the Sultan of Morocco, Ahmad al-Mansour, sent an expedition to conquer the Songhay Empire to the south of the Sahara and also set up a vassal state in Sudan. The motivation for this southern expansion was the desire for salt, with which to purchase gold and silver. The Songhay Empire had prospered through trading and had become a centre of learning and culture; its dominion comprised the area between and around the trading centres of Jenne, Gao and Taghaza, with Timbuktu as its capital. Timbuktu was conquered and the Songhay Empire then paid tribute to Morocco for the century that followed. Moroccan control over Songhay was temporary and at no point did it extend over the Moorish tribal areas to the west.

In the Eighteenth Century, Saguia el-Hamra became known as the "Land of Saints", a focus for Islamic learning and spirituality centred on the holy city of Smara, and attracted Muslim pilgrims from across Africa and the Middle East.

7.0 Colonial History

Following an initial Portuguese colonial expedition to northern Morocco (1434 –1578), European colonial expansion in North West Africa commenced in earnest with the French invasions of Algeria (1830) and Morocco (1844). Spanish forces invaded Ceuta (1860) establishing Spanish Morocco and then subsequently in 1884 declaring a Spanish protectorate (Rio del Oro) extending from Cape Blanc to Cape Bojador. The 1885 Berlin Conference, which settled the partition of Africa between the European powers, ratified the colonisation of Algeria (effective 1870), Rio de Oro and Spanish Morocco (both 1885). Negotiations to define the frontiers between the French and Spanish zones commenced in 1886, leading to the signing of a series of Franco-Spanish colonial treaties in 1900, 1904 and 1912. Morocco and Spanish Sahara were subsequently proclaimed protectorates of France and Spain in 1912.

In contrast to Moroccan submission, the Saharawis people fiercely opposed both French and Spanish colonial expansion. France consolidated its hold on Morocco and then intensified its military offensive in Mauritania, with numerous incursions into Spanish Sahara (Saguia el-Hamra). The Saharawis continued to strongly resist French occupation of Mauritania, causing France in 1934 to threaten that it would forcibly occupy the Spanish protectorates in an effort to quell resistance. This threat led to joint Franco-Spanish military cooperation in 1936 to destroy the indigenous resistance movement in Mauritania and the Spanish protectorates. It is at this point that Spain is judged to have taken effective possession of 'Spanish Sahara'.

Franco-Spanish military cooperation culminated, in 1958, in the widespread military action known as the 'Ecouvillon Operation' that crushed Saharawi organised resistance. The Saharawi forces, which had previously supported and assisted Moroccans (and also Mauritaniens and Algerians) in their liberation struggle against France, requested support from Morocco against continued Spanish occupation of Western Sahara. However, under a clandestine deal with Spain, Morocco betrayed the Saharawi people cutting off critical supplies and munitions. In payment for this dishonourable assistance Spain assigned Morocco the province of Tarfaya, south of the Moroccan frontier, which up until that time had been under Spanish domination and inhabited by Saharawis.

Saharawi resistance to occupation continued under a repressive Spanish colonial administration with sporadic demonstrations. As part of UN efforts to ensure decolonisation of Africa, Western Sahara was included in the UN list of Non Self-Governing Territories in 1963 and the UN General Assembly commenced calls for a referendum of self-determination to be organised in the Territory in 1966. In 1967 Saharawi civil resistance to colonial rule became coordinated under the Movement for the Liberation of the Sahara. Plans by Spain in 1970 to turn Western Sahara into a Spanish province led to massive civil demonstrations. Spanish forces massacred demonstrators and the liberation movement was crushed by the colonial administration.

Faced with the prospect of continued oppression by Spain, the Saharawi people were left with no option but to fight for their sovereignty. In 1973, the Front for the Liberation of Saguia el Hamra and Rio de Oro, henceforth known as the POLISARIO Front, was formed. Shortly afterwards, a programme of armed resistance commenced against the occupying Spanish forces, with brutal reprisals against the civilian population by the colonial government.

In preparation for a referendum requested by the UN, the Spanish colonial administration conducted a population census of the territory in 1974. The United Nations sent delegations to discuss the political intentions of the population and surrounding countries. On 14th of November 1975 however, under a covert treaty now referred to as the 'Madrid Accords', the Spanish authorities partitioned 'Spanish Sahara'. This partition divided the territory between the neighbouring countries of Morocco and Mauritania in return for resource rights. Spain then subsequently withdrew its colonial forces. On 27 February 1976, the day the last Spanish soldier left the territory, the Saharawi people proclaimed at Bir Lahlou the foundation of the Saharawi Arab Democratic Republic (SADR).

Morocco and Mauritania immediately moved to occupy Western Sahara. With Moroccan government coercion and financial incentives, 350,000 Moroccans were organised, under protection of the Moroccan Armed Forces, to participate in the so-called "Green March" to invade and settle Western Sahara on 16th October 1976.

Progressive escalation of the confrontation during in 1976 led to a mass exodus of 165,000 Saharawi citizens over the eastern border of the Territory to escape Moroccan air strikes. These indiscriminate bombardments of the civilian population involved the use of both Napalm and cluster bombs. Saharawi refugees settled in tented camps close to the border near the Algerian town of Tindouf.

Polisario forces subsequently engaged in a prolonged and extensive military campaign against Moroccan and Mauritanian military targets in Western Sahara and in the adjacent territories.

In 1979, Mauritania agreed by formal treaty with Polisario to withdraw all territorial claims to Western Sahara. Mauritania subsequently formally recognised the SADR as the legitimate sovereign authority of Western Sahara.

Moroccan forces immediately moved to occupy the territory formerly occupied by Mauritanian forces. A protracted military struggle then commenced consisting of Polisario attacks on Moroccan military targets, including raids inside the Saharawi Territory and Southern Morocco, and Moroccan reprisals that involved brutal repression of the civilian Saharawi population remaining in the occupied territory. Morocco was given direct military assistance by France in its war with Polisario, including the use of the French airforce to bomb Saharawi settlements and citizens.

In the early 1980's Morocco commenced the construction of a 2,200 km defensive wall (berm) to enclose the occupied territory. This rock/sand installation stands approximately 2 metres high with regularly spaced garrisons, with the foreground covered with trenches and barbed wire and extensively seeded with an estimated 3 million landmines.

In 1991, the United Nations and the Organization of African Unity sponsored a peace plan, which was agreed by both parties in the conflict and eventually led to a) the deployment of the UN Mission for a Referendum in the Western Sahara (MINURSO), b) the declaration of a cease-fire (which formalized the berm as the dividing line between the parties), and c) the beginning of the identification of eligible voters based upon those listed on the 1974 census.

Since 1991 the UN has attempted to proceed with the formal process of decolonisation with the aim of holding a referendum to determine the wishes of the people of the Territory and a lasting legal settlement to the conflict.

8.0 Political Structure

In late 1967, Saharawis set up a movement called Harakat Tahrir Saguia el-Hamra wa Oued ed-Dahab (Organisation for the Liberation of Saguia el-Hamra and Oued ed-Dahab) to demand a peaceful transition to independence for Western Sahara. This protest group was crushed by Spanish colonial forces in 1970. A subsequent liberation movement, the Frente Popular para la Liberacion de Saguia el Hamra y Rio de Oro (Polisario Front), was then founded in 1973. This new movement adopted an armed struggle against Spanish colonial forces and soon the overwhelming majority of the Saharawis rallied to its ranks.

Resistance eventually led to withdraw of the Spanish colonial forces, and the Polisario Front proclaimed the Saharawi Arab Democratic Republic (SADR) on 27th February 1976. Under the provisional constitution of the SADR, the Polisario military forces were named the Saharan Peoples Liberation Army (SPLA).

The Polisario Front is a liberation movement rather than a political party and thus fills a role identical to the ANC of South Africa, SWAPO of Namibia or Fretilin of East Timor during their respective liberation struggles. Polisario has many political tendencies, however there is one unifying aim – the achievement of freedom and independence for the Saharawi people.

Polisario has a General Congress every 3 to 4 years to elect the leadership. Most of the Polisario leadership concurrently have positions in the SADR Government. After independence, the role of Polisario will have been accomplished and a multi-party political system will be introduced.

The constitution of the SADR has been developed during a series of Congresses attended by democratically elected delegates. These Congresses were held throughout the war(s) with Sand Morocco and national platforms and strategies emerged from these assemblies as well as the election of leaders for the government-in-exile.

The constitution of the SADR reflects the struggle for national independence for the Saharawi people and the formation of a democratic nation state. The Congresses of the SADR outlined political, military, administrative, social and diplomatic plans, along with programmes for action. The construction of the new Saharawi nation is to be based on the following fundamentals:

- Elimination of rural-urban disparities;
- work to assure women's political and social rights and thus ensure full participation in society and in the construction of the nation;
- elimination of all causes of social and moral corruption;
- protection of the Saharawi civilisation and religious heritage;
- provision of free and compulsory education;
- banning of capital punishment;
- commitment to disease prevention, construction of hospitals and provision of free medical care;
- guaranteed basic rights and lives of dignity for all citizens; and
- commitment to provide a home for every citizen.
- Encouragement of Foreign investment

These principles, which aim to ensure the provision of democratic and human rights for the citizens of the SADR.

The government comprises a number of Ministries that have responsibility for defined internal (domestic) and external matters. These Ministries are assisted by a range of councils and committees which have members elected by their constituency and who work in partnership with government bodies. In preparation for formal government, the SADR/Polisario have prepared a 'white paper' defining the structure, functions, and principles of the government. In addition the Government has instigated an apprenticeship program for individuals expected to fill key roles in the public and private sector (banking, customs, port management etc). Following settlement of the conflict, the SADR/Polisario will transfer their effective working administrative structure from the camps to the territory.

Formally, the SADR is divided into four provinces (Wilayas), each being further divided into districts (Dairas). The Dairas are intended to become the SADR 's regional and local administrative units, but at present serve as units of administration for refugees in the Tindouf region. Each Daira is centred on a refugee camp and holds assemblies to elect members to its council and representatives to the provincial and national councils. The Daira councils oversee the administration of the refugee camps and operate in a highly disciplined manner.

The SADR was seated as full member of the OAU in 1984 and is recognised by 76 countries worldwide as the legitimate government of the Saharawi people. HE Mohammed Abdelaziz currently holds the posts of Secretary General of the Frente Polisario and President of the SADR.

9.0 Refugee Camps

The Saharawi refugee camps are located in the southwest of Saharan Algeria, near the Algerian town of Tindouf, which also serves as the southern headquarters for the Algerian Armed Forces, with a notable army and air force presence. The camps of Smara, Awserd and Laayoune are clustered around the Polisario administrative center of Rabouni, with the Dakhla camp located approximately 155 km from this center. The Saharawi Arab Democratic Republic/Frente Polisario has been granted administrative and governing autonomy over this area by the Algerian government. The population of each camp was estimated in 1997 to be between 45,000 and 65,000, for a total camp population of 167,000. However, over the past several years, the population is estimated to have exceeded 200,000.

The desert where the Refugee Camps are located is one of the most inhospitable within Africa and was inhabited prior to the arrival of the Saharawi refugees. This region is extremely arid, with summer temperatures often exceeding 55 degrees Celsius and with very infrequent rainfall. There is no naturally occurring surface water, the ground is very stony and covered by fine dust. The area is prone to savage dust storms (siroccos) that may last for several days.

In such harsh conditions the organisation of the refugee camps must be extremely effective, and rests almost entirely in the hands of Saharawi women. The majority of the men do not live in the camps; they are either on active duty with the army or working overseas.

Initially the infection and mortality rates in the refugee camps were very high. Because of continual Moroccan objections regarding the numbers of Saharawi refugees existing in the Camps the United Nations High Commission for Refugees (UNHCR) has been distributing enough food for only 80,000 people (the real number exceeds 180,000). This situation has led to malnutrition and its effects are particularly notable amongst the children in the camps. Due to Moroccan interference the UNHCR and other humanitarian organisations are currently calculated as being approximately one year behind in distributing the aid that has been pledged to the Refugee Camps. . However a strong focus on hygiene and attention to provision of food for children has allowed both infant mortality and malnutrition to be controlled.

Each camp has a community garden where vegetables are grown for the sick and infirm. Because of the conditions very little can be grown and only the most needy have access to a limited range of fresh vegetables. Families depend on humanitarian aid provided by the UNHCR. This consists of powdered milk (which is vitamin-enriched) and very basic foods such as beans, pasta, rice and flour. Occasionally goat, mutton or camel is available but this happens quite rarely and is shared between many people.

Water is scarce and contamination has been a problem as each camp relies on underground wells that have been dug to provide some water for irrigation and household use. Bottled water is transported in but not many refugee families have access. Difficulties with water and facilities have meant problems with hygiene that have resulted in a range of diseases such as hepatitis and debilitating fevers. Diarrhoea is endemic and is a serious health problem for children and the elderly. Polisario and a range of NGO's have worked hard to alleviate these conditions but are hampered by the harshness and isolation of the environment.

Asthma and lung disease are also a major health problem because of the dust and dryness. Deaths have resulted and asthma prevention is unable to occur because of lack of medicine, equipment and doctors. Cataracts and eye diseases are similarly preventable yet common problems. Although many humanitarian organisations such as the Solidaridad Internacional del Pais Valenciano provide medical clinics in the Refugee Camps, the needs of inhabitants greatly outstrip these limited services.

Preventative health care has been a focus for the SADR, with programmes adopted to train Saharawi women to act as nurses and provide overseas medical training for young Saharawis. The Ministry for Health Care has opened a national hospital with operating facilities and provision for a range of physiological and psychiatric treatments.

10.0 Saharawi Women

The SADR government recognises the future role of Saharawi women in the reconstruction and management of their country and has placed significant emphasis on the education of women. A number of female schools have been established offering further and continued education for mature women. These schools are residential and allow Saharawi women to move to the school with their family and combine further education with family welfare.

Saharawi women are respected, occupy significant leadership positions with the SADR Government (Ministers) and participate fully at all senior levels of society. Their role is seen as crucial to the effective functioning of the Refugee Camps and the society overall. Saharawi women are actively encouraged to participate in political activities and play a large part in the development of international support through their attendance and organisation of conferences and international seminars in Africa, Europe and the United States.

11.0 Education

Considerable attention has also been placed by the SADR on education. At the time of the Moroccan invasion the illiteracy rate of the Saharawis was 95%, a heritage from the Spanish colonisation. At present, after almost twenty years in exile, the Saharawis have succeeded in reversing this figure so that the number of people able to read and write is now 90%. Education is compulsory for all Saharawi children. There are neighbourhood crèches and nursery schools, and primary schools for each camp. Two large secondary education schools have also been built. The Saharawi teachers have either received specialist education qualifications abroad, or undertake supervised traineeships at the schools to enable them to provide teaching assistance.

A certain number of students receive University education through assistance programmes with countries. It is a stated objective of the Education Ministry to improve the potential of the Saharawi population, not only to create the best possibilities for individuals in the camps, but above all to prepare the population for the reconstruction of their own country after independence.

The result of this attention to education is that the Saharawi society is politically aware at all levels and has developed a strong collective motivation towards achieving the goal of national independence. There is considerable commitment to this cause, which is demonstrated by the number of Saharawis who provide skilled services, work within the Ministries of the SADR or undertake international diplomatic work on a purely voluntary basis.

12.0 Commerce

The concept of payment for labour is new to the Saharawi society that traditionally operated through a bartering system. The SADR has considered and outlined economic plans for industrial development, this includes taking control of the existing phosphate, fishing and iron ore industries, all of which are currently being exploited by Morocco.

Private commercial activities occur within the camps, with the presence of small neighbourhood shops, services and development of distinct commercial areas. Basic retail goods are sold through these retail outlets and also fresh meat to supplement the limited diet provided under the UNHCR humanitarian relief programme. Currency for these goods comes largely from expatriate Saharawis remitting funds to their families from overseas. This development represents a continuation of the traditional Saharawi role as trade intermediaries in the region.

13.0 Human Rights

Since its occupation of Western Sahara, numerous allegations concerning the brutal kidnapping and imprisonment of Saharawis by the occupying Moroccan forces have been made. Human rights agencies such as Amnesty International have made repeated requests to the Moroccan Government for the information on these individuals and lobbied for the release of these political detainees. It is estimated that in excess of 1000 Saharawis have now 'disappeared' during Moroccan occupation.

The Moroccan regime had officially denied the existence of these detainees until 1991, when as a result of international pressure, 270 Saharawis who had been unlawfully held for 16 years were released in the occupied territories. These Saharawis were prevented from talking about their experiences and were forced to constantly report to the Moroccan police. Those who managed to evade surveillance and escape have confirmed widespread torture, the death of many of their compatriots in Moroccan jails and the existence of still hundreds of Saharawis who remain 'disappeared'.

None of those Saharawis who were released were given any reason or compensation for their unlawful detention by the Moroccan government. The families of those who have died in Moroccan prisons have not been provided with confirmation of death or the whereabouts of their graves.

International Human rights organizations continue to condemn the appalling human rights record of the Moroccan regime, particularly the inhuman treatment of the Saharawis in the occupied territories. Despite this international pressure, Moroccan human rights abuses continue unabated in the occupied territory despite the presence of UN peacekeepers and observers.

On 25 February 2000, the US Department of State for Democracy, Human Rights and Labour published its reports for 1999 on Morocco and Western Sahara. It confirmed that the Moroccan Regime continues to oppress Saharawis in the occupied areas of Western Sahara. The report stated "In what were clearly the worst instances of police excess during the year, police authorities in Laayoune (Capital of Western Sahara) used brutal force to break up demonstrations organized by students, unemployed graduates, miners and former Saharawi political prisoners ... police encouraged thugs in civilian dress to break into, loot and destroy shops owned by local Saharawi residents in the city." The report further stated 46 Saharawis were sentenced to prison terms ranging from 2 months to 15 years for simply participating in a peaceful demonstration. The report further added that civilians "whose homes were searched were also beaten by police who came to arrest other members of the household. No official investigation was made into the police's conduct, and no police authorities were charged with any criminal or civil wrongdoing by year's end."

From time to time as a gesture of good will and compassion the Saharawi independence movement has released Moroccan POWs on humanitarian grounds. Ironically, for propaganda reasons, the Moroccan regime has previously refused to allow these released POW's to return to Morocco.

14.0 United Nations

14.1 UN Decolonisation Program

The Charter of the United Nations (1945) recognises the right of peoples to self-determination. It also recognises that, largely because of colonialism, not all peoples who claim this right will be immediately able to exercise it fully. Peoples in this situation are deemed to be in non-self-governing territories and the UN General Assembly has established decolonisation programs to address the rights of such peoples.

In 1963 Western Sahara was included in the UN list of the non-self-governing territories and in 1964 the UN Decolonisation Committee adopted its first Resolution on Western Sahara, urging Spain to start the process of decolonising the territory. The UN General Assembly issued a similar Resolution in 1965.

Initially, Spain resisted this call but in 1974 it informed the UN that it was prepared to organize a referendum on self-determination in the territory. In this referendum, the people of Western Sahara could choose either full independence or to remain attached to Spain. Morocco and Mauritania opposed the referendum idea, which excluded the possibility of integration with Morocco or Mauritania. In 1975 a UN mission of inquiry was sent to report on the situation in Western Sahara. The mission visited Western Sahara, Morocco, Mauritania and Algeria. In its report, it stated that support for Polisario and for independence in Western Sahara was widespread and recommended the holding of a referendum for self-determination.

14.2 The International Court of Justice

In order to postpone referendum plans, Morocco, with the support of Mauritania, asked the UN General Assembly to seek arbitration from the International Court of Justice (ICJ) and to give legal advice on this matter. In December 1974, the ICJ was asked to give an advisory opinion on: (a) whether or not the Western Sahara had been *terra nullius* - a territory belonging to no one - at the time of Spanish colonisation, and (b) if it was not *terra nullius* at the time of Spanish colonisation, what was the legal relationship between Western Sahara and Morocco, and Western Sahara and Mauritania.

The ICJ studied all the documents presented to it by Morocco, Mauritania, Spain and Algeria but the Saharawis were not allowed to appear before the Court since the ICJ can hear evidence from only States. After twenty-seven sessions, the ICJ issued its opinion in October 1975.

The Court decided unanimously that :

- i) 'Western Sahara was not *terra nullius* when Spain proclaimed a protectorate over it in 1884, since it 'was inhabited by peoples which, if nomadic, were socially and politically organised in tribes and under chiefs competent to represent them'.

The Court further concluded that

- ii) 'the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity'.

Thus the Court did not find legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonisation of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.

The ICJ decision was a clear rejection of the Moroccan claim of sovereignty over Western Sahara

14.3 Referendum

Despite the Court's decision, Morocco and Mauritania invaded and occupied Western Sahara in 1975 in a violation of international law. The UN Security Council immediately adopted a resolution deploring the invasion and calling on Morocco to withdraw from the Territory but the resolution was never enforced.

In 1988, under international pressure, Morocco agreed to a UN-OAU peace process. Central to the UN-OAU peace plan ('the plan') is the holding of a referendum providing an opportunity for the Saharawi people to exercise their right to self-determination in a free and fair manner. A cease-fire was declared in September 1991 and a UN mission (MINURSO) was deployed in the Territory.

In December 1991 the UN Special Representative for Western Sahara resigned in protest at UN tacit agreement to Morocco's violations of the Plan. Morocco had blocked the deployment of the UN mission (MINURSO) and halted its logistical supplies at the Moroccan ports. Foreign visitors, the media and

NGOs were not given access to the Territory. The UN also reported many violations of the cease-fire and it was also revealed that a UN staff member had leaked sensitive Polisario data to the Moroccans. According to the original plan, the referendum was initially planned for 1992. The referendum however was repeatedly postponed first until 1996, then 1998, and finally to 2000.

In 1995, the Deputy Chairman of MINURSO's Identification Commission, former US Ambassador, Frank Ruddy, testified before the US Congress about the UN operation in Western Sahara and its lack of progress. He described Moroccan behaviour as "Mafia-like" and characterized it as "thuggery". He stated that the UN telephones were tapped, its mail tampered with and its staff regularly searched. He added that the Saharawis were harassed, those registering to vote were photographed by the Moroccans and their registration cards taken away after they had been identified.

The peace process has witnessed new vigour since Kofi Annan became the Secretary General of the UN in 1997 and appointed James Baker III as his Special Envoy for Western Sahara. Negotiations between Morocco and the Polisario were held under the auspices of the UN Special Envoy on many occasions and culminated in an agreement, which was signed in Houston, Texas in 1997 ('the Houston Agreement'). The Houston Agreement strengthened the key aspects of the original plan: voter identification, refugee repatriation, troop confinement, release of prisoners, freedom to campaign, access for international observers and the UN authority to ensure a free and fair referendum process. The fact that the Houston Agreement was negotiated by both parties involved and signed under UN auspices created the belief that material progress had been made in resolving the conflict.

Although the UN mission made significant initial progress in the registration of eligible voters and other preparations for the holding of the referendum, Morocco continued to exert considerable influence over the activities of the UN within the Territory and succeeded in repeatedly delaying and stalling the referendum process.

Morocco initially attempted to add approximately 250,000 names to the voter list, however these spurious claims were rejected by the UN and in February 2000 the first round of UN Voter identification was completed with 86,000 eligible voters identified. Morocco subsequently submitted 130,000 additional names for review by the UN Voter Registration Commission.

14.4 Framework Agreement

Frustration with continuing problems over voter identification, Special envoy James Baker III explored other possible mechanisms to resolve the conflict. This has led to the inclusion of the "Draft Framework Agreement" in the UN Secretary General Report s/2000/613 of 20 June 2001. This plan was sponsored and supported by Morocco, however as it did not provide for the sovereign rights of the Saharawi people to be respected; the proposal was rejected by Polisario, Algeria and Mauritania. Furthermore, the majority of the UN Security Council reminded the Secretary General and his envoy that it had already accepted an appropriate resolution plan and had not approved this alternative arrangement.

Therefore, after 27 years of conflict during the last eleven years of which the UN has invested a great deal of efforts and over US \$ 500 million, and bearing in mind that the UN Legal Counsel has recently reaffirmed that Western Sahara is a decolonisation issue, it is crystal clear that the only democratic and viable solution to this conflict lie in the exercise of the Saharawi people of the their inalienable right to self-determination, through a vote in which they decide their own future.

14.5 Recent Developments

- i) On 19th February 2002, the Secretary-General of the United Nations issued a report concerning the situation in Western Sahara. This report restated the past ten years of negotiations and concluded that there were four options available. The Secretary General asked the Security Council to choose one of the options and give him the mandate to implement it without the consent of the parties. The options are:
 - 1. Implementation of the Settlement Plan (Referendum)**
This option would be imposed without concurrence of both parties, is opposed by the Moroccan Government and supported by the SADR; this would lead to a full referendum and would require an increase in UN involvement.
 - 2. Implementation of a reviewed Framework Agreement (Autonomy as part of Morocco)**
This option would be imposed without concurrence of both parties, is opposed by SADR and supported by Morocco; this would lead to sovereignty over the territory being assigned to Morocco with a referendum possibly in the future autonomy and may led to a reduction in UN involvement.
 - 3. Partition of the Territory**
A division of the Territory between Morocco and the SADR. "This approach to a political solution would give each party some, but not all of what it wants" (SG report 19 February 2002)
 - 4. Withdrawal of UN**
This option acknowledges that the UN mission has failed to resolve the conflict.
- The Secretary General recommended extending the UN Peacekeeping Mandate until 30th April 2002 in order for the Security Council to decide on a route forward.
- ii) On 26th April 2002, a draft resolution in support of the option 2 (integration into Morocco) was circulated among the Security Council members with the backing of the USA. The majority of the SC membership did not endorse such proposal.
 - iii) On 30th April 2002, the Security Council of the United Nations met to consider its position with regard to the report from the Secretary-General and the proposed alternatives to resolve the conflict. The Security Council extended the MINURSO mandate to 31st July 2002 to further consider the options presented to it on 19th February report of the Secretary General of the UN.

Appendix 1

ICJ, Western Sahara, Advisory Opinion of 16 October 1975

International Court of Justice

Case Summaries

WESTERN SAHARA

Advisory Opinion of 16 October 1975

In its Advisory Opinion which the General Assembly of the United Nations had requested on two questions concerning Western Sahara, the Court,

With regard to Question I, "Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?",

- decided by 13 votes to 3 to comply with the request for an advisory opinion;
- was unanimously of opinion that Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain was not a territory belonging to no one (*terra nullius*).

With regard to Question II, "What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?", the Court

- decided by 14 votes to 2 to comply with the request for an advisory opinion;
- was of opinion, by 14 votes to 2, that there were legal ties between this territory and the Kingdom of Morocco of the kinds indicated in the penultimate paragraph of the Advisory Opinion;
- was of opinion, by 15 votes to 1, that there were legal ties between this territory and the Mauritanian entity of the kinds indicated in the penultimate paragraph of the Advisory Opinion.

The penultimate paragraph of the Advisory Opinion was to the effect that:

The materials and information presented to the Court show the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the

application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.

For these proceedings the Court was composed as follows: President Lachs; Vice-President Ammoun; Judges Forster, Gros, Bengzon, Petrén, Onyeama, Dillard, Ignacio-Pinto, de Castro, Morozov, Jiménez de Aréchaga, Sir Humphrey Waldock, Nagendra Singh and Ruda; Judge *ad hoc* Boni.

Judges Gros, Ignacio-Pinto and Nagendra Singh appended declarations to the Advisory Opinion; Vice-President Ammoun and Judges Forster, Petrén, Dillard, de Castro and Boni appended separate opinions, and Judge Ruda a dissenting opinion.

In these declarations and opinions the judges concerned make clear and explain their positions.

*

* *

Course of the Proceedings

(paras. 1-13 of Advisory Opinion)

The Court first recalls that the General Assembly of the United Nations decided to submit two questions for the Court's advisory opinion by resolution 3292 (XXIX) adopted on 13 December 1974 and received in the Registry on 21 December. It retraces the subsequent steps in the proceedings, including the transmission of a dossier of documents by the Secretary-General of the United Nations (Statute, Art. 65, para. 2) and the presentation of written statements or letters and/or oral statements by 14 States, including Algeria, Mauritania, Morocco, Spain and Zaire (Statute, Art. 66).

Mauritania and Morocco each asked to be authorized to choose a judge *ad hoc* to sit in the proceedings. By an Order of 22 May 1975 (*I.C.J. Reports 1975, p. 6*), the Court found that Morocco was entitled under Articles 31 and 68 of the Statute and Article 89 of the Rules of Court to choose a person to sit as judge *ad hoc*, but that, in the case of Mauritania, the conditions for the application of those Articles had not been satisfied. At the same time the Court stated that those conclusions in no way prejudged its views with regard to the questions referred to it or any other question which might fall to be decided, including those of its competence to give an advisory opinion and the propriety of exercising that competence.

Competence of the Court

(paras. 14-22 of Advisory Opinion)

Under Article 65, paragraph 1, of the Statute, the Court may give an advisory opinion on any legal question at the request of any duly authorized body. The Court notes that the General Assembly of the United Nations is suitably authorized by Article 96, paragraph 1, of the Charter and that the two questions submitted are framed in terms of law and raise problems of international law. They are in principle questions of a legal character, even if they also embody questions of fact, and even if they do not call upon the Court to pronounce on existing rights and obligations. The Court is accordingly competent to entertain the request.

Propriety of Giving an Advisory Opinion

(paras. 23-74 of Advisory Opinion)

Spain put forward objections which in its view would render the giving of an opinion incompatible with the Court's judicial character. It referred in the first place to the fact that it had not given its consent to the Court's adjudicating upon the questions submitted. It maintained (a) that the subject of the questions was substantially identical to that of a dispute concerning Western Sahara which Morocco, in September 1974, had invited it to submit jointly to the Court, a proposal which it had refused: the advisory jurisdiction was therefore being used to circumvent the principle that the Court has no jurisdiction to settle a dispute without the consent of the parties; (b) that the case involved a dispute concerning the attribution of territorial sovereignty over Western Sahara and that the consent of States was always necessary for the adjudication of such disputes; (c) that in the circumstances of the case the Court could not fulfil the requirements of good administration of justice with regard to the determination of the facts. The Court considers (a) that the General Assembly, while noting that a legal controversy over the status of Western Sahara had arisen during its discussions, did not have the object of bringing before the Court a dispute or legal controversy with a view to its subsequent peaceful settlement, but sought an advisory opinion which would be of assistance in the exercise of its functions concerning the decolonization of the territory, hence the legal position of Spain could not be compromised by the Court's answers to the questions submitted; (b) that those questions do not call upon the Court to adjudicate on existing territorial rights; (c) that it has been placed in possession of sufficient information and evidence.

Spain suggested in the second place that the questions submitted to the Court were academic and devoid of purpose or practical effect, in that the United Nations had already settled the method to be followed for the decolonization of Western Sahara, namely a consultation of the indigenous population by means of a referendum to be conducted by Spain under United Nations auspices. The Court examines the resolutions adopted by the General Assembly on the subject, from resolution 1514 (XV) of 14 December 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples, to resolution 3292 (XXIX) on Western Sahara, embodying the request for advisory opinion. It concludes that the decolonization process envisaged by the General Assembly is one which will respect the right of the population of Western Sahara to determine their future political status by their

own freely expressed will. This right to self-determination, which is not affected by the request for advisory opinion and constitutes a basic assumption of the questions put to the Court, leaves the General Assembly a measure of discretion with respect to the forms and procedures by which it is to be realized. The Advisory Opinion will thus furnish the Assembly with elements of a legal character relevant to that further discussion of the problem to which resolution 3292 (XXIX) alludes.

Consequently the Court finds no compelling reason for refusing to give a reply to the two questions submitted to it in the request for advisory opinion.

Question I: "Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the Time of Colonization by Spain a Territory Belonging to No One (terra nullius)?"

(paras. 75-83 of Advisory Opinion)

For the purposes of the Advisory Opinion, the "time of colonization by Spain" may be considered as the period beginning in 1884, when Spain proclaimed its protectorate over the Rio de Oro. It is therefore by reference to the law in force at that period that the legal concept of *terra nullius* must be interpreted. In law, "occupation" was a means of peaceably acquiring sovereignty over territory otherwise than by cession or succession; it was a cardinal condition of a valid "occupation" that the territory should be *terra nullius*. According to the State practice of that period, territories inhabited by tribes or peoples having a social and political organization were not regarded as *terrae nullius*: in their case sovereignty was not generally considered as effected through occupation, but through agreements concluded with local rulers. The information furnished to the Court shows (a) that at the time of colonization Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them; (b) that Spain did not proceed upon the basis that it was establishing its sovereignty over *terrae nullius*: thus in his Order of 26 December 1884 the King of Spain proclaimed that he was taking the Rio de Oro under his protection on the basis of agreements entered into with the chiefs of local tribes.

The Court therefore gives a negative answer to Question I. In accordance with the terms of the request for advisory opinion, "if the answer to the first question is in the negative", the Court is to reply to Question II.

Question II: "What Were the Legal Ties of This Territory with the Kingdom of Morocco and the Mauritanian Entity?"

(paras. 84-161 of Advisory Opinion)

The meaning of the words "legal ties" has to be sought in the object and purpose of resolution 3292 (XXIX) of the United Nations General Assembly. It appears to the Court that they must be understood as referring to such legal ties as may affect the policy to be followed in the decolonization of Western Sahara. The Court cannot accept the view that the ties in question could be limited to ties established directly with the territory and without reference to

the people who may be found in it. At the time of its colonization the territory had a sparse population that for the most part consisted of nomadic tribes the members of which traversed the desert on more or less regular routes, sometimes reaching as far as southern Morocco or regions of present-day Mauritania Algeria or other States. These tribes were of the Islamic faith.

Morocco (paragraphs 90-129 of the Advisory Opinion) presented its claim to legal ties with Western Sahara as a claim to ties of sovereignty on the ground of an alleged immemorial possession of the territory and an uninterrupted exercise of authority. In the view of the Court, however, what must be of decisive importance in determining its answer to Question II must be evidence directly relating to effective display of authority in Western Sahara at the time of its colonization by Spain and in the period immediately preceding. Morocco requests that the Court should take account of the special structure of the Moroccan State. That State was founded on the common religious bond of Islam and on the allegiance of various tribes to the Sultan, through their caids or sheiks, rather than on the notion of territory. It consisted partly of what was called the Bled Makhzen, areas actually subject to the Sultan, and partly of what was called the Bled Siba, areas in which the tribes were not submissive to him; at the relevant period, the areas immediately to the north of Western Sahara lay within the Bled Siba.

As evidence of its display of sovereignty in Western Sahara, Morocco invoked alleged acts of internal display of Moroccan authority, consisting principally of evidence said to show the allegiance of Saharan caids to the Sultan, including dahirs and other documents concerning the appointment of caids, the alleged imposition of Koranic and other taxes, and acts of military resistance to foreign penetration of the territory. Morocco also relied on certain international acts said to constitute recognition by other States of its sovereignty over the whole or part of Western Sahara, including (a) certain treaties concluded with Spain, the United States and Great Britain and Spain between 1767 and 1861, provisions of which dealt *inter alia* with the safety of persons shipwrecked on the coast of Wad Noun or its vicinity, (b) certain bilateral treaties of the late nineteenth and early twentieth centuries whereby Great Britain, Spain, France and Germany were said to have recognized that Moroccan sovereignty extended as far south as Cape Bojador or the boundary of the Rio de Oro.

Having considered this evidence and the observations of the other States which took part in the proceedings, the Court finds that neither the internal nor the international acts relied upon by Morocco indicate the existence at the relevant period of either the existence or the international recognition of legal ties of territorial sovereignty between Western Sahara and the Moroccan State. Even taking account of the specific structure of that State, they do not show that Morocco displayed any effective and exclusive State activity in Western Sahara. They do, however, provide indications that a legal tie of allegiance existed at the relevant period between the Sultan and some, but only some, of the nomadic peoples of the territory, through Tekna caids of the Noun region, and they show that the Sultan displayed, and was recognized by other States to possess, some authority or influence with respect to those tribes.

The term "Mauritanian entity" (paragraphs 139-152 of the Advisory Opinion) was first employed during the session of the General Assembly in 1974 at which resolution 3292 (XXIX), requesting an advisory opinion of the Court, was adopted. It denotes the cultural, geographical and social entity within which the Islamic Republic of Mauritania was to be created. According to Mauritania, that entity, at the relevant period, was the Bilad Shinguitti or Shinguitti country, a distinct human unit, characterized by a common language, way of life, religion and system of laws, featuring two types of political authority: emirates and tribal groups.

Expressly recognizing that these emirates and tribes did not constitute a State, Mauritania suggested that the concepts of "nation" and of "people" would be the most appropriate to explain the position of the Shinguitti people at the time of colonization. At that period, according to Mauritania, the Mauritanian entity extended from the Senegal river to the Wad Sakiet El Hamra. The territory at present under Spanish administration and the present territory of the Islamic Republic of Mauritania thus together constituted indissociable parts of a single entity and had legal ties with one another.

The information before the Court discloses that, while there existed among them many ties of a racial, linguistic, religious, cultural and economic nature, the emirates and many of the tribes in the entity were independent in relation to one another; they had no common institutions or organs. The Mauritanian entity therefore did not have the character of a personality or corporate entity distinct from the several emirates or tribes which comprised it. The Court concludes that at the time of colonization by Spain there did not exist between the territory of Western Sahara and the Mauritanian entity any tie of sovereignty, or of allegiance of tribes, or of simple inclusion in the same legal entity. Nevertheless, the General Assembly does not appear to have so framed Question II as to confine the question exclusively to those legal ties which imply territorial sovereignty, which would be to disregard the possible relevance of other legal ties to the decolonization process. The Court considers that, in the relevant period, the nomadic peoples of the Shinguitti country possessed rights, including some rights relating to the lands through which they migrated. These rights constituted legal ties between Western Sahara and the Mauritanian entity. They were ties which knew no frontier between the territories and were vital to the very maintenance of life in the region.

Morocco and Mauritania both laid stress on the overlapping character of the respective legal ties which they claimed Western Sahara to have had with them at the time of colonization (paragraphs 153-160 of the Advisory Opinion). Although their views appeared to have evolved considerably in that respect, the two States both stated at the end of the proceedings that there was a north appertaining to Morocco and a south appertaining to Mauritania without any geographical void in between, but with some overlapping as a result of the intersection of nomadic routes. The Court confines itself to noting that this geographical overlapping indicates the difficulty of disentangling the various relationships existing in the Western Sahara region at the time of colonization.

*

* *

For these reasons, the Court (paragraphs 162 and 163 of the Advisory Opinion) gives the replies indicated on pages 1 and 2 above.

Appendix 2

Proclamation of the First Government of the Saharawi Arab Democratic Republic, Bir Lahlou, 27 February 1976

PROCLAMATION OF THE FIRST GOVERNMENT OF THE SAHARAWI ARAB DEMOCRATIC REPUBLIC

Bir Lahlou, 27 February 1976

In the name of the Saharawi people, and in pursuance of their will, the flag of the Saharawi Arab Democratic Republic has been raised over the land of Saguiaat el-Hamra and Rio de Oro. The birth of an African State with deep roots in the history of our people, with a civilisation which spread over the entire Maghreb was so proclaimed. The strength of this state arises out of the faith of its sons in their right to life and freedom, and its principal arm is their determination and perseverance in the struggle.

A new page has been started on which is written the struggle of our people who are today defying the colonialism of the neighbour "brothers", for by their heroic struggle they brought the previous page of the foreign enemy's colonialism to an end.

Today the Saharawi people have decided to publicly take an important step: to set up the fundamental institutions arising out of revolutionary legality, essential to succeed in the present struggle for liberty and to exercise truly democratic power.

In carrying out the will of our people the POLISARIO Front, with the unanimous agreement of the Provisional National Saharawi Council, decided to constitute a government which will assume responsibilities for the continuation of the battle, raising the flag of the liberation struggle always higher until final victory, which will guarantee peace and security for our people and open before them and brother Arabs and Africans the way to unity and liberation.

On this occasion we renew our commitment to the principles of the United Nations Charter and the Organisation of African Unity, in particular those concerned with defending the rights of man, territorial integrity and established frontiers, as a guarantee of African and international peace and security.

We want to draw the attention of the United Nations Organisation, the Organisation of African Unity and the Arab League to their historical responsibility towards a peaceful people, victims of an attempt at extermination, a veritable genocide.

We put this responsibility before all the peoples of the world, for it is their duty to assist the victims of aggression, so that the imperialist plot will fail.

At this historical moment when the government of the Saharawi Arab Democratic Republic has been constituted on national soil and proclaimed at the same time in Algiers, Tripoli, Tananarive, Conakry, Bujumbura, we hold out a friendly hand to the brother peoples of Morocco and Mauritania, to ask them to support our liberation struggle and understand that the future belongs to peoples. We call on them to spare innocent blood by demanding that this war, imposed on us by their regimes to serve foreign interests and personal ambitions, be brought to an end.

We hold out the hand of friendship to all the peoples and States of the world, asking them to support our just struggle and recognize the Saharawi Arab Democratic Republic. We state on this occasion our sincere desire to establish friendly relations and co-operation with all States on the basis of mutual respect and national sovereignty.

We are determined to continue the struggle until final victory, whatever the sacrifices may be. For as long as this aggression lasts, until our people have completed the liberation of their national territory, there will be neither peace nor stability in this region.

Appendix 3

UN Security Council Resolutions: 690/725 (1991)

THE SITUATION CONCERNING WESTERN SAHARA¹⁴¹

Decision

At its 2984th meeting, on 29 April 1991, the Council discussed the item entitled "The situation concerning Western Sahara: report by the Secretary-General (S/22464 and Corr.1)".⁷

Resolution 690 (1991)
of 29 April 1991

The Security Council,

Recalling its resolution 621 (1988) of 20 September 1988, by which it, *inter alia*, requested the Secretary-General to transmit to it a report on the holding of a referendum for self-determination of the people of Western Sahara and on ways and means to ensure the organization and supervision of such a referendum by the United Nations in cooperation with the Organization of African Unity,

Recalling also that, on 30 August 1988, the Kingdom of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro gave their agreement in principle to the proposals of the Secretary-General of the United Nations and the current Chairman of the Assembly of Heads of State and Government of the Organization of African Unity in the framework of their joint mission of good offices,

Recalling further its resolution 658 (1990) of 27 June 1990, by which it approved the report of the Secretary-General of 18 June 1990,¹⁴² which contains the full text of the settlement proposals as accepted by the two parties on 30 August 1988, as well as an outline of the plan provided by the Secretary-General in order to implement those proposals, and by which it requested the Secretary-General to transmit to it a further detailed report on his implementation plan, containing in particular an estimate of the cost of the United Nations Mission for the Referendum in Western Sahara,

Desirous of reaching a just and lasting solution of the question of Western Sahara,

Having examined the report of the Secretary-General of 19 April 1991 on the situation concerning Western Sahara,¹⁴³

1. *Approves* the report of the Secretary-General, transmitted to the Council in accordance with resolution 658 (1990);¹⁴³

2. *Expresses its full support* for the efforts of the Secretary-General for the organization and the supervision, by the United Nations in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara, in accordance with the objectives mentioned in his report;

3. *Calls upon* the two parties to cooperate fully with the Secretary-General in the implementation of his plan as described in his report of 18 June 1990¹⁴² and amplified in his report of 19 April 1991;¹⁴³

4. *Decides* to establish, under its authority, a United Nations Mission for the Referendum in Western Sahara in accordance with the report of 19 April 1991;

5. *Also decides* that the transitional period will begin no later than sixteen weeks after the General Assembly approves the budget for the Mission;

6. *Requests* the Secretary-General to keep the Security Council regularly informed of the implementation of his settlement plan.

Adopted unanimously at the 2984th meeting.

Decisions

In a letter dated 21 June 1991¹⁴⁴ addressed to the President of the Security Council for the attention of the members of the Council, the Secretary-General referred to paragraph 82 of his report of 18 June 1990 on the situation concerning Western Sahara,¹⁴² in which he had stated that he would seek the Council's consent to the appointment of the Force Commander of the Military Unit of the United Nations Mission for the Referendum in Western Sahara. Having completed his consultations with the parties, he proposed, with the consent of the Council, to appoint Major-General Armand Roy (Canada) as the Force Commander of the Military Unit of the Mission.

In a letter dated 24 June 1991,¹⁴⁵ the President of the Security Council informed the Secretary-General as follows:

"I have the honour to inform you that your letter dated 21 June 1991¹⁴⁴ concerning the appointment of the Force Commander of the Military Unit of the United Nations Mission for the Referendum in Western Sahara has been brought to the attention of the members of the Security Council and that your proposal meets with their approval."

In a letter dated 8 July 1991¹⁴⁶ addressed to the President of the Security Council, the Secretary-General referred to his report of 18 June 1990 to the Security Council on the situation concerning Western Sahara¹⁴² and stated that in accordance with paragraph 12 of that report, he had addressed identical letters on 24 May 1991 to Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro proposing a specific date and hour for the formal cease-fire to begin. In letters dated 11 June 1991 and 10 June 1991, respectively, Morocco and the Frente Popular had informed the Secretary-General of their acceptance of his proposal that the formal cease-fire should begin at 0600 GMT on 6 September 1991.

In a letter dated 3 September 1991¹⁴⁷ addressed to the President of the Security Council, the Secretary-General, in accordance with the United Nations plan for the referendum in Western Sahara as described in his report of 18 June 1990¹⁴² and amplified in his report of 19 April 1991,¹⁴³ and with resolution 690 (1991) of 29 April 1991, transmitted to the President of the Security Council a note regarding the implementation of the cease-fire. The Secretary-General stated that, concerned at recent developments along the international frontier, he had decided that United Nations efforts should be concentrated, at this stage, in the areas referred to in the note, that is Aguenit, Awsard, Bir Lahlou, Mahbes, Meharrize, Mijek, Oum Dreyga, Smara, Tifariti and Zug. In this context, he recalled that paragraph 20 of his report of 18 June 1990 stipulated that the establishment and functioning of the observer group would be in accordance with the general principles applicable to United Nations peace-keeping operations.

In a letter dated 4 September 1991,¹⁴⁸ the President of the Security Council informed the Secretary-General as follows:

"I have the honour to inform you that I have brought to the attention of the members of the Security Council your letter dated 3 September 1991¹⁴⁷ concerning the situation in Western Sahara.

"The members of the Council endorse your action and continue to support your efforts."

In a letter dated 13 September 1991¹⁴⁹ addressed to the President of the Security Council, the Secretary-General referred to the United Nations plan for the referendum in Western Sahara as described in his report of 18 June 1990¹⁴² and amplified in his report of 19 April 1991¹⁴³ and resolution 690 (1991) of 29 April 1991, and further to his letter dated 3 September 1991,¹⁴⁷ he informed the President of the Council

that in the context of the deployment of military observers to verify the cease-fire and the cessation of hostilities in the areas referred to in that letter, he had decided to deploy about one hundred additional military observers and the staff necessary for command and control functions, logistical support, communications, air transport and medical support.

In a letter dated 17 September 1991,¹⁵⁰ the President of the Security Council informed the Secretary-General as follows:

"I have transmitted to the members of the Security Council your letter of 13 September 1991¹⁴⁹ concerning the United Nations plan for the referendum in Western Sahara.

"The members of the Council have asked me to thank you for the information contained in that letter and to inform you that they endorse your action."

At its 3025th meeting, on 31 December 1991, the Council discussed the item entitled "The situation concerning Western Sahara: report of the Secretary-General (S/23299)".²⁷

Resolution 725 (1991) of 31 December 1991

The Security Council,

Reaffirming its resolutions 621 (1988) of 20 September 1988, 658 (1990) of 22 June 1990 and 690 (1991) of 29 April 1991,

Having considered the report of the Secretary-General of 19 December 1991 on the situation concerning Western Sahara,¹⁵¹

Noting with concern the difficulties and delays encountered in the implementation of the settlement plan regarding the question of Western Sahara, as adopted by resolutions 658 (1990) and 690 (1991),

1. *Approves* the efforts of the Secretary-General for the organization and the supervision, by the United Nations in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara, and therefore welcomes the report of the Secretary-General of 19 December 1991 on the situation concerning Western Sahara;¹⁵¹

2. *Reiterates its support* for further efforts by the Secretary-General for the organization and the supervision, by the United Nations in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara in conformity with resolutions 658 (1990) and 690 (1991), by which the Council adopted the settlement plan for Western Sahara;

3. *Calls upon* the two parties to cooperate fully with the Secretary-General in the implementation of the settlement plan, which has been accepted by them;

4. *Invites* the Secretary-General to submit a further report to the Security Council as soon as possible, but in any event within two months of the date of passage of this resolution.

Adopted unanimously at the 3025th meeting

Appendix 4

Congress of the United States, Review of United Nations Operations and Peacekeeping, 25 January 1995

Congress of the United States

House of Representatives

Committee on Appropriations

Washington, DC 20515-6015

REVIEW OF UNITED NATIONS OPERATIONS AND PEACEKEEPING

January 25, 1995

2:00 P.M.

2360 Rayburn House Office Building

Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related
Agencies

Witness List

- The Hon. Dick Thornburgh, Kirkpatrick & Lockhart, former Under- Secretary-General for Administration and Management of the United Nations
- Ambassador Jeane J. Kirkpatrick, Senior Fellow, American Enterprise Institute, former U.S. Representative to the United Nations
- John R Bolton, President, National Policy Forum, former Assistant Secretary of State, International Organisation Affairs
- Ambassador Frank Ruddy, former Deputy Chairman, Referendum for Western Sahara, MINURSO Peacekeeping Operation

STATEMENT OF FRANK RUDDY

before the Subcommittee on the Departments of Commerce, Justice, State and the Judiciary and Related
Agencies

I am honored to be invited here today among such distinguished company. I will speak briefly about the United Nations Mission for the Referendum in Western Sahara (MINURSO) where I spent most of last year.

People who know a lot more than I do have written books on the history and politics of Western Sahara. Let me just note that Western Sahara is the former Spanish Sahara. MINURSO was created in September, 1991:

1. to monitor a cease-fire in the war which had been raging between Morocco and the Popular Front for the Liberation of Saguia el Hamra and Rio Oro, better known as the POLISARIO, since the Spanish withdrew from the area and
2. to conduct a referendum on the future of the area.

The referendum, originally supposed to take place in 1992, is meant to decide whether Western Sahara would become an independent state or a part of Morocco. The next-to-the-latest referendum date was February 14, 1995, and even His Majesty, King Hassan II of Morocco, just last November that he was 100% certain it would take place on that date. The referendum has since been pushed back to some time in November 1995. As of this writing, the referendum business in Western Sahara is stalled yet again, at a cost of \$100,000 a day by MINURSO's own estimates.

HOW TO START THE REFERENDUM:

A first step in a referendum is taking applications from the would-be voters: that should have meant bringing people in to U.N. offices and having them answer set questions, in writing, in order to establish their eligibility to vote.

HOW NOT TO START:

At some point in 1993, MINURSO had decided not to take applications itself but to delegate this crucial task to the parties: The Moroccans registered their people in their own centers in Western Sahara, and the POLISARIO did the same in Southern Algeria. MINURSO merely received whatever registration information the parties chose to provide. That proved to be a very unwise decision.

WHAT WENT WRONG:

Our own (Identification Commission) Arabic speakers came to me to report that Sahrawis coming in for what is called identification were complaining to them (in Hassania, the local Arabic dialect) that members of their families and friends had filled out applications at the Moroccan-run centers but did not appear on the list of people to be identified and hence were disenfranchised. Others complained that relatives and friends were on the list to be identified, but the Moroccans refused to put them on the van. (A word of explanation. Only those local people who are cleared by the Moroccans are permitted to enter the MINURSO Identification center or the U.N. offices at all, for that matter. The police keep everyone else away. People coming to be identified on a given day can't just walk in. They are rounded up by the Moroccans at some central point and sent by van to the MINURSO identification center.) In this way, the Moroccans control who gets identified. That's just not the way it's supposed to be, and that's not the kind of process the U.N. is supposed to be funding. All of this was reported within channels at MINURSO. It was never taken up with the Moroccans so far as I know, and for certain U.N. Headquarters in New York was never informed.

This is the same reason, by the way, we were unsuccessful in inviting Sahrawis to fill out voter application at our centers. Nobody was allowed anywhere near us without Moroccan Government approval.

One other observation: Some Sahrawis who reported what the Moroccans were doing to them asked that our U.N. people keep an eye out for them after they left, in case they disappeared. Many said they were scared for their lives if the Moroccans saw them talking to U.N. people. Others asked not to be recognized outside the U.N. center. Terrorized may be too strong a word, but they were afraid. Their comments reminded me of nothing so much as South Africa in the early 70's when blacks would talk to you freely in the safety of the U.S. embassy then pretend they didn't know you as soon as they left.

I should note here that when I say Moroccans I am referring to the Ministry of Interior people who ran the show in Western Sahara. It is hard to believe, and I personally don't believe, that a statesman like King Hassan II knew, let alone authorized, the Mafia-like behavior exhibited by his representatives.

HOW IDENTIFICATION SHOULD WORK:

After registration, the next step is to see if the people who applied are qualified to vote. To do this, a part of MINURSO called the Identification Commission, conducts hearings and makes findings, like a court. This is the process that is continuously, and currently, stalled in MINURSO.

There are 233,000 people already applying to vote, and they all have to go before the Identification Commission at some point to be identified. If you add another 10%, a reasonable estimate by all accounts, to cover other eligible voters living in remote parts of Algeria, Mauritania or in The Canaries, Spain or France, the number rises to over 250,000. It takes 7 minutes in the most routine cases to identify someone, and, as of December 1994, MINURSO identification centers were averaging somewhere around 400 or so persons total a day. That's not much of a bite out of 250,000. The process, through no fault of the Identification Commission staff who work very hard, is moving at a snail's pace. Even in the most optimistic of scenarios, where the problems are simply technical and logistical, and the identification teams are increased ten-fold, the sheer weight of numbers makes it virtually impossible for the process to be completed in time for a November, 1995 referendum. When, however, there is added to the mix a conscious effort to obstruct the process, as is the case right now, the November 1995 date becomes quixotic.

DELAYING TACTICS:

So-called Morocco experts tell me that Morocco doesn't want the referendum because the risks outweigh any possible gains. The status quo is not so bad. On the other hand, Morocco cannot afford to appear to be the villain of the piece and will find the means to slow the process down until everyone is sick of it. I will leave Morocco's motives and strategies to the experts of which I am definitely not one. I merely note that in December of last year, Morocco halted the identification process for over a week, at a cost, once again of \$100'000 a day on the question of an adverb used in a schedule proposed by MINURSO. This resulted in an exchange of formal letters and a good deal of sophomoric quibbling. If Morocco had been interested in clarifying the matter, as opposed to simply delaying the process, it seemed to me it could have been done so in two minutes in a phone call or meeting with the native-French speaker, a former Togolese ambassador, who drafted the letter.

In the same month, the Moroccan liaison officer with MINURSO bragged publicly to a group of MINURSO people in a bar, that he alone was the one to decide whether identification would go forward the next day (it was then scheduled to resume), and to prove his point he picked up the phone (it was then about midnight), and, in front of everyone, cancelled the next week's identification sessions.

These are not the actions of people serious about getting the referendum on track or saving the U.N. money. These demagogic actions should have been, but were never, reported to U.N. New York.

The identification process was supposed to begin on June 15, 1994, but the start was delayed two and a half months, at a cost of millions of dollars, while the U.N., the POLISARIO and Morocco negotiated over what to call the O.A.U. representatives who were to come to observe the identification. The Moroccans had walked out of the O.A.U. years ago when it recognized the Sahrawi Arabic Democratic Republic created by the POLISARIO and now said they didn't want O.A.U. people in Western Sahara. The POLISARIO insisted the O.A.U. representatives were part of the referendum process and had to be there. In the end a compromise about what they were to be called was reached, and they were permitted to enter. The irony is that this had all been worked out in 1993, and there was no need, as far as any of us could see, except delay for the sake of delay, to reinvent the wheel in 1994.

THUGGERY:

Each person who appears before the Identification Commission gets a receipt, and when the findings are made public, the persons who are found eligible to vote turn those receipts in for a voter's card. What was happening in Laayoune is that Sahrawis returning from the identification centers on those same vans I was talking about were being forced to turn in their receipts to the Moroccans before they can leave the vans. This opens up the very real possibility that the wrong people may be presenting receipts and getting voter cards. This is a very serious problem, indeed, and was reported within channels at MINURSO. U.N. New York was never informed.

The identification process began in earnest on August 28, 1994, simultaneously in Western Sahara and Southern Algeria. One can say that surely, as of this date, MINURSO ceased to be a U.N.-run operation and became the instrument for Morocco's domination of the identification process.

You need government permission to buy space on Moroccan media, and Morocco had always denied MINURSO permission to buy space in the Moroccan newspapers or radio to alert people to register to vote and participate in the identification process. That was small potatoes compared to what was to come after August 28. Harold Macmillan once referred to how the Borgia brothers would take over a Northern Italian town. Watching the Moroccans at work, I thought of that description.

SOME FOR-INSTANCES:

On August 27, the evening before the process began in Laayoune, the Moroccan Liaison with MINURSO upbraided the chief-of-Mission in a public dining room before Moroccans and MINURSO staff and directed him to remove all U.N. flags from the U.N. building where the identification was to take place, or he would close down the identification. Unfortunately, the Chief-of-Mission gave in and even the U.N. flag in the room where the opening ceremony was to take place was removed. This shameful event was probably too embarrassing to report to U.N. Headquarters in New York. In any event, it never was.

During the days of the opening sessions in Laayoune, Moroccan "journalists" photographed and videotaped every minute of every day and took the picture of each Sahrawi who came to be identified. These "journalists" were, as our press people and the head of our police observers (CIVPOL) noted Moroccan state security people. The proof was that not one second of these hours of television coverage ever appeared on

Moroccan television. This flagrant abuse of press coverage was never reported to U.N. New York.

A few weeks later, telephone taps were found on local and all international lines at MINURSO headquarters. The taps went to a local Moroccan line. This was hushed up. There was no investigation, but the person most likely to have installed the taps was transferred immediately. Mail had regularly been tampered with, and rooms of MINURSO personnel were regularly searched, but this was a new wrinkle. Big brother was now listening to, as well as, watching us, and U.N. New York was never informed.

In the following weeks, Morocco dictated even our work and flight schedules. When the Moroccan observers chose to be in Western Sahara, we worked. The Moroccans also insisted that U.N. planes fly empty, and at great expense, from Laayoune where the planes are based, across the desert to the POLISARIO camps at Tindouf in order to demonstrate their control of the process. This inexcusable waste of flying hours and fuel was never reported to New York. Interestingly enough, and this is a good example of how the U.N. works, once criticism of this practice became public, MINURSO continued the flights, but stuck a few military observers on for effect, so no one could say they're dead-heading.

On another occasion, Morocco announced that a MINURSO staff member was barred from returning to Western Sahara for inflammatory and provocative remarks he had made while conducting an identification session in Southern Algeria. Fortunately, there was a video and audiotape of his remarks, and they shown to be perfectly harmless. The Moroccan note protesting his remarks, which were not prepared or available before he made them, was handed to the senior MINURSO representative before the remarks were even made. This was a clear case of harassment, but, under Moroccan pressure, the Chief-of-Mission relieved the individual of his duties. The incident was not reported to U.N. New York until a month later when I decided I had to. Once Morocco's action became public, he was allowed to return to Western Sahara.

In Laayoune, the Moroccans continue to treat the U.N. identification facilities as their own, running groups of visiting firemen in whenever they like and keeping the facilities open, if that's what it takes, to accommodate late arrivals. It's not a question of if; it's a question of when. On one occasion, when the Moroccan liaison with MINURSO arrived at the identification center, he was furious to find he had to wait a few moments for the gate to be unlocked so he could enter what he called "chez moi", my place. And that is how the Moroccans have been permitted, through MINURSO timidity, to think of the U.N. facilities in Laayoune.

Ambassador Albright was gracious enough to invite me to New York to give her my assessment of MINURSO, and I have done so. I have also been asked to give my observations on any procurement irregularities at MINURSO to a member of her staff, and I shall. I was not at all surprised to hear Ambassador Albright say that the problems of MINURSO are not political but management issues which cut across party lines. In these hard times, it is not enough that the U.N. tries to do the right thing. There's just not enough money to go around for that. The U.N. must, as the ambassador said in a Baltimore Sun article last summer, "emphasize results".

I read the transcript of the Secretary-General's private meetings when he was in Western Sahara and Algeria last November, and I had the honour to escort him around MINURSO. He pulled no punches. He was well aware of the fiscal responsibility this Congress will demonstrate (what he called "une nouvelle attitude négative chez les Américains", a new negative American attitude), and he spoke of tough love. There is just too much for the U.N. to do to waste its times with parties which lack the will to work to resolve their differences. Ironically, as he spoke, the process in Western Sahara was once again broken down and would become even worse after he left.

Many people I respect in MINURSO, people from the Middle East and the Maghreb and old Arab-hands, tell me the Moroccan influence in MINURSO is too far ingrained to be excised. MINURSO, they say, as a credible institution, is not salvageable. I don't believe that has to be the case. True, both the Moroccans in Western Sahara and MINURSO are out-of-control right now. I think if Rabat and the palace is shown first hand what has been carried out by the thugs in its name, it will make the necessary changes. As it is now, it is, to quote Voltaire, worse than a crime; it is a mistake, and His Majesty, King Hassan II, doesn't make many mistakes. The United Nations does not have within its ineffective bureaucracy the initiative to cure the management problems at MINURSO, but that same "nouvelle attitude négative chez les Américains" that Boutros-Ghali talked about can work wonders in making the U.N. to take a hard look at MINURSO and its management which is accountable to no one and operates on a plantation mentality. A good management team could clean that place out and re-establish MINURSO's credibility within the Security Council and throughout the international community.

Thank you very much.

Appendix 5

UN Security Council, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, 12 February 2002

**Security Council**

Distr.: General
12 February 2002

Original: English

Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council

1. In a letter addressed to me on 13 November 2001, the President of the Security Council requested, on behalf of the members of the Council, my opinion on “the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara”.
2. At my request, the Government of Morocco provided information with respect to two contracts, concluded in October 2001, for oil-reconnaissance and evaluation activities in areas offshore Western Sahara, one between the Moroccan Office National de Recherches et d’Exploitations Pétrolières (ONAREP) and the United States oil company Kerr McGee du Maroc Ltd., and the other between ONAREP and the French oil company TotalFinaElf E&P Maroc. Concluded for an initial period of 12 months, both contracts contain standard options for the relinquishment of the rights under the contract or its continuation, including an option for future oil contracts in the respective areas or parts thereof.
3. The question of the legality of the contracts concluded by Morocco offshore Western Sahara requires an analysis of the status of the Territory of Western Sahara, and the status of Morocco in relation to the Territory. As will be seen, it also requires an analysis of the principles of international law governing mineral resource activities in Non-Self-Governing Territories.
4. The law applicable to the determination of these questions is contained in the Charter of the United Nations, in General Assembly resolutions pertaining to decolonization, in general, and economic activities in Non-Self-Governing Territories, in particular, and in agreements concerning the status of Western Sahara. The analysis of the applicable law must also reflect the changes and developments which have occurred as international law has been progressively codified and developed, as well as the jurisprudence of the International Court of Justice and the practice of States in matters of natural resource activities in Non-Self-Governing Territories.



A. The status of Western Sahara under Moroccan administration

5. A Spanish protectorate since 1884, Spanish Sahara was included in 1963 in the list of Non-Self-Governing Territories under Chapter XI of the Charter (A/5514, annex III). Beginning in 1962, Spain as administering Power transmitted technical and statistical information on the Territory under Article 73 *e* of the Charter of the United Nations. This information was examined by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ("the Special Committee"). In a series of General Assembly resolutions on the question of Spanish/Western Sahara, the applicability to the Territory of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) was reaffirmed.

6. On 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania ("the Madrid Agreement"), whereby the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration. The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara as a Non-Self-Governing Territory.

7. On 26 February 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory, thus leaving it in fact under the administration of both Morocco and Mauritania in their respective controlled areas. Following the withdrawal of Mauritania from the Territory in 1979, upon the conclusion of the Mauritano-Sahraoui agreement of 19 August 1979 (S/13503, annex I), Morocco has administered the Territory of Western Sahara alone. Morocco, however, is not listed as the administering Power of the Territory in the United Nations list of Non-Self-Governing Territories, and has, therefore, not transmitted information on the Territory in accordance with Article 73 *e* of the Charter of the United Nations.

8. Notwithstanding the foregoing, and given the status of Western Sahara as a Non-Self-Governing Territory, it would be appropriate for the purposes of the present analysis to have regard to the principles applicable to the powers and responsibilities of an administering Power in matters of mineral resource activities in such a Territory.

B. The law applicable to mineral resource activities in Non-Self-Governing Territories

9. Article 73 of the Charter of the United Nations lays down the fundamental principles applicable to Non-Self-Governing Territories. Members of the United Nations who assumed responsibilities for the administration of these Territories have thereby recognized the principle that the interests of the inhabitants of these Territories are paramount, and have accepted as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these Territories. Under Article 73 *e* of the Charter, they are required to transmit regularly to the Secretary-

General for information purposes statistical and other information of a technical nature relating to economic, social, and educational conditions in the Territories under their administration.

10. The legal regime applicable to Non-Self-Governing Territories was further developed in the practice of the United Nations and, more specifically, in the Special Committee and the General Assembly. Resolutions of the General Assembly adopted under the agenda item entitled “Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples” called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration did not adversely affect the interests of the peoples of such Territories, but were instead directed towards assisting them in the exercise of their right to self-determination. The Assembly also consistently urged the administering Powers to safeguard and guarantee the inalienable rights of the peoples of those Territories to their natural resources, and to establish and maintain control over the future development of those resources (resolutions 35/118 of 11 December 1980, 52/78 of 10 December 1997, 54/91 of 6 December 1999, 55/147 of 8 December 2000 and 56/74 of 10 December 2001).

11. In the resolutions adopted under the agenda item entitled “Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination”, the General Assembly reiterated that “the exploitation and plundering of the marine and other natural resources of colonial and Non-Self-Governing Territories by foreign economic interests, in violation of the relevant resolutions of the United Nations, is a threat to the integrity and prosperity of those Territories”, and that “any administering Power that deprives the colonial peoples of Non-Self-Governing Territories of the exercise of their legitimate rights over their natural resources ... violates the solemn obligations it has assumed under the Charter of the United Nations” (resolutions 48/46 of 10 December 1992 and 49/40 of 9 December 1994).

12. In an important evolution of this doctrine, the General Assembly, in its resolution 50/33 of 6 December 1995, drew a distinction between economic activities that are detrimental to the peoples of these Territories and those directed to benefit them. In paragraph 2 of that resolution, the General Assembly affirmed “the value of foreign economic investment undertaken in collaboration with the peoples of the Non-Self-Governing Territories and in accordance with their wishes in order to make a valid contribution to the socio-economic development of the Territories”. This position has been affirmed by the General Assembly in later resolutions (resolutions 52/72 of 10 December 1997, 53/61 of 3 December 1998, 54/84 of 6 December 1999, 55/138 of 8 December 2000 and 56/66 of 10 December 2001).

13. The question of Western Sahara has been dealt with both by the General Assembly, as a question of decolonization, and by the Security Council, as a question of peace and security. The Council was first seized of the matter in 1975, and in its resolutions 377 (1975) of 22 October 1975 and 379 (1975) of 2 November 1975 it requested the Secretary-General to enter into consultations with the parties. Since 1988, in particular, when Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y del Río de Oro (Frente POLISARIO) agreed, in principle, to the settlement proposals of the Secretary-General and the Chairman of the Organization of African Unity, the political process aiming at a peaceful settlement

of the question of Western Sahara has been under the purview of the Council. For the purposes of the present analysis, however, the body of Security Council resolutions pertaining to the political process is not relevant to the legal regime applicable to mineral resource activities in Non-Self-Governing Territories and for this reason is not dealt with in detail in the present letter.

14. The principle of “permanent sovereignty over natural resources” as the right of peoples and nations to use and dispose of the natural resources in their territories in the interest of their national development and well-being was established by the General Assembly in its resolution 1803 (XVII) of 14 December 1962. It has since been reaffirmed in the 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, as well as in subsequent General Assembly resolutions, most notably, resolution 3201 (S-VI) of 1 May 1974, entitled “Declaration on the Establishment of a New International Economic Order”, and resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States. While the legal nature of the core principle of “permanent sovereignty over natural resources”, as a corollary to the principle of territorial sovereignty or the right of self-determination, is indisputably part of customary international law, its exact legal scope and implications are still debatable. In the present context, the question is whether the principle of “permanent sovereignty” prohibits *any* activities related to natural resources undertaken by an administering Power (cf. para. 8 above) in a Non-Self-Governing Territory, or only those which are undertaken in disregard of the needs, interests and benefits of the people of that Territory.

C. The case law of the International Court of Justice

15. The question of natural resource exploitation by administering Powers in Non-Self-Governing Territories was brought before the International Court of Justice in the case of *East Timor (Portugal v. Australia)* and the case concerning *Certain Phosphate Lands in Nauru (Nauru v. Australia)*. In neither case, however, was the question of the legality of resource exploitation activities in Non-Self-Governing Territories conclusively determined.

16. In the case of *East Timor*, Portugal argued that in negotiating with Indonesia an agreement on the exploration and exploitation of the continental shelf in the area of the Timor Gap, Australia had failed to respect the right of the people of East Timor to permanent sovereignty over its natural wealth and resources, and the powers and rights of Portugal as the administering Power of East Timor. In the absence of Indonesia’s participation in the proceedings, the International Court of Justice concluded that it lacked jurisdiction.

17. In the *Nauru Phosphate* case, Nauru claimed the rehabilitation of certain phosphate lands worked out before independence in the period of the trusteeship administration by Australia, New Zealand and the United Kingdom of Great Britain and Northern Ireland. Nauru argued that the principle of permanent sovereignty over natural resources was breached in circumstances in which a major resource was depleted on grossly inequitable terms and its extraction involved the physical reduction of the land. Following the judgment on the Preliminary Objections, the parties reached a settlement and a judgment on the merits was no longer required.

D. The Practice of States

18. In the recent practice of States, cases of resource exploitation in Non-Self-Governing Territories have, for obvious reasons, been few and far apart. In 1975, the United Nations Visiting Mission to Spanish Sahara reported that at the time of the visit, four companies held prospecting concessions in offshore Spanish Sahara. In discussing the exploitation of phosphate deposits in the region of Bu Craa with Spanish officials, the Mission was told that the revenues expected to accrue would be used for the benefit of the Territory, that Spain recognized the sovereignty of the Saharan population over the Territory's natural resources and that, apart from the return of its investment, Spain laid no claim to benefit from the proceeds (A/10023/Rev.1, p. 52).

19. The exploitation of uranium and other natural resources in Namibia by South Africa and a number of Western multinational corporations was considered illegal under Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted in 1974 by the United Nations Council for Namibia, and was condemned by the General Assembly (resolutions 36/51 of 24 November 1981 and 39/42 of 5 December 1984). The case of Namibia, however, must be seen in the light of Security Council resolution 276 (1970) of 30 January 1970, in which the Council declared that the continued presence of South Africa in Namibia was illegal and that consequently all acts taken by the Government of South Africa were illegal and invalid.

20. The case of East Timor under the United Nations Transitional Administration in East Timor (UNTAET) is unique in that, while UNTAET is not an administering Power within the meaning of Article 73 of the Charter of the United Nations, East Timor is still technically listed as a Non-Self-Governing Territory. By the time UNTAET was established in October 1999, the Timor Gap Treaty was fully operational and concessions had been granted in the Zone of Cooperation by Indonesia and Australia, respectively. In order to ensure the continuity of the practical arrangements under the Timor Gap Treaty, UNTAET, acting on behalf of East Timor, concluded on 10 February 2000 an Exchange of Letters with Australia for the continued operation of the terms of the Treaty. Two years later, in anticipation of independence, UNTAET, acting on behalf of East Timor, negotiated with Australia a draft "Timor Sea Arrangement" which will replace the Timor Gap Treaty upon the independence of East Timor. In concluding the agreement for the exploration and exploitation of oil and natural gas deposits in the continental shelf of East Timor, UNTAET, on both occasions, consulted fully with representatives of the East Timorese people, who participated actively in the negotiations.

E. Conclusions

21. The question addressed to me by the Security Council, namely, "the legality ... of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara", has been analysed by analogy as part of the more general question of whether mineral resource activities in a Non-Self-Governing Territory by an administering Power are illegal, as such, or only if conducted in disregard of the needs and interests of the people of that Territory. An analysis of the relevant provisions of the Charter of the United Nations, General Assembly resolutions, the

case law of the International Court of Justice and the practice of States supports the latter conclusion.

22. The principle that the interests of the peoples of Non-Self-Governing Territories are paramount, and their well-being and development is the “sacred trust” of their respective administering Powers, was established in the Charter of the United Nations and further developed in General Assembly resolutions on the question of decolonization and economic activities in Non-Self-Governing Territories. In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources in their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources. The Assembly recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those Territories, and their contribution to the development of such Territories.

23. In the cases of *East Timor* and *Nauru*, the International Court of Justice did not pronounce itself on the question of the legality of economic activities in Non-Self-Governing Territories. It should be noted, however, that in neither case was it alleged that mineral resource exploitation in such Territories was illegal per se. In the case of *East Timor*, the conclusion of an oil exploitation agreement was allegedly illegal because it had not been concluded with the administering Power (Portugal); in the *Nauru* case, the illegality allegedly arose because the mineral resource exploitation depleted unnecessarily or inequitably the overlaying lands.

24. The recent State practice, though limited, is illustrative of an opinio juris on the part of both administering Powers and third States: where resource exploitation activities are conducted in Non-Self-Governing Territories for the benefit of the peoples of those Territories, on their behalf or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power and in conformity with the General Assembly resolutions and the principle of “permanent sovereignty over natural resources” enshrined therein.

25. The foregoing legal principles established in the practice of States and the United Nations pertain to economic activities in Non-Self-Governing Territories, in general, and mineral resource exploitation, in particular. It must be recognized, however, that in the present case, the contracts for oil reconnaissance and evaluation do not entail exploitation or the physical removal of the mineral resources, and no benefits have as of yet accrued. The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council’s request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.

(Signed) Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel

Appendix 6

UN Security Council, Report of the Secretary-General on the situation concerning Western Sahara, 19 February 2002



Security Council

Distr.: General
19 February 2002

Original: English

Report of the Secretary-General on the situation concerning Western Sahara

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1380 (2001) of 27 November 2001, by which the Council, taking note of my letter to the President of the Security Council dated 12 November 2001 (S/2001/1067), extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 28 February 2002. The Council also reaffirmed its resolution 1359 (2001) of 29 June 2001 and its previous resolutions on the question of Western Sahara, and requested me to keep the Council informed of all significant developments in an interim report by 15 January. The Council requested me to provide an assessment of the situation and, as appropriate, recommendations on the future mandate and composition of the mission. The present report covers developments since my interim report to the Council, dated 10 January 2002 (S/2002/41).

II. Activities of the Personal Envoy of the Secretary-General

2. On 24 and 25 January 2002, my Personal Envoy, James A. Baker III, visited Morocco, where he was received twice by His Majesty King Mohammed VI and high-level government officials. The purpose of the visit of my Personal Envoy was to inform the Moroccan authorities of the rejection by Algeria and the Frente POLISARIO of the draft framework agreement, as had been reiterated to him by the President of Algeria, Abdelaziz Bouteflika, during his visit to the James Baker Institute in Houston, Texas, on

2 November 2001, and that, in the view of my Personal Envoy, Algeria and the Frente POLISARIO would be prepared to discuss or negotiate a division of the Territory as a political solution to the dispute over Western Sahara.

3. During his visit to the region, my Personal Envoy took the opportunity to pay a short visit to the MINURSO headquarters in Laayoune, where he met with my recently appointed Special Representative, William Lacy Swing.

III. Developments on the ground

A. Activities of my Special Representative

4. Following his introductory meetings with Moroccan Government authorities at Rabat and the Frente POLISARIO leadership in the Tindouf area, my Special Representative also made his introductory visit to Algiers from 14 to 17 January, where he met with President Bouteflika and senior members of the Government of Algeria. While in Algiers, he also met with officials from the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Food Programme (WFP), who are implementing humanitarian assistance programmes in the Tindouf refugee camps. On 27 January, he met in Casablanca with a delegation of senior UNHCR officials to discuss cross-border confidence-building measures.

5. Subsequently, on 17 January, my Special Representative visited the Tindouf area where he met with the Secretary-General of the Frente POLISARIO, Mohamed Abdelaziz, and other members of the Frente POLISARIO leadership. He had several meetings in



Laayoune with the Moroccan Coordinator with MINURSO. These contacts are part of my Special Representative's effort to maintain a pattern of regular contacts with the parties.

6. On 13 and 14 February, my Special Representative made his introductory visit to Nouakchott, where he met with the President of Mauritania, Maaouya Ould Sid' Ahmed Taya, and other senior government officials, as well as the UNHCR representative in Mauritania.

B. Appeals process

7. Since my last report to the Council (S/2002/41), the Identification Commission has reduced its staff to a total of 40. It has continued to consolidate and collate all data on applicants to the referendum, collected during their identification and the submission of appeals. The Commission proceeded with the electronic archiving of individual files. As at 31 January 2002, the total number of files electronically archived in both the Territory and the Tindouf area exceeded 43,000. The Commission has also initiated a technical review of the logistical requirements in the event of a resumption of the appeals process.

C. Military aspects

8. As at 7 February 2002, the military component of MINURSO stood at the authorized strength of 230 military personnel (see annex). Under the command of Brigadier General Claude Buze (Belgium), the component continued to monitor the ceasefire between the Royal Moroccan Army and the Frente POLISARIO military forces, which has been in effect since 6 September 1991. It is important to reiterate that since the entry into effect of the ceasefire, and the establishment of MINURSO, there has been no resumption of hostilities between the parties, and no indication on the ground that either side intends to resume them in the near future. The contribution of MINURSO to the maintenance of the ceasefire has been significant.

9. During the reporting period, MINURSO continued discussions with the Frente POLISARIO, at various levels, with a view to easing or lifting the restrictions which have been imposed by the latter on the freedom of movement of United Nations military observers east of the defensive sandwall (berm) since

January 2001. As already reported to the Security Council (see S/2001/148, S/2001/398, S/2001/613 and S/2002/41), MINURSO ground patrols are usually not allowed closer than 800 metres to Frente POLISARIO combat units or observation posts, and are required to be escorted at all times by Frente POLISARIO liaison officers, who exercise de facto control of the patrols' movements. Large tracts of land south and east of the MINURSO team site at Agwanit are still out of bounds for the United Nations. MINURSO air reconnaissance remains limited to the 30-kilometre restricted area immediately east of the berm and has to follow air routes approved by the Frente POLISARIO. Despite the efforts of MINURSO, no significant progress can be reported towards lifting those restrictions. I call on the Security Council to join me in requesting the Frente POLISARIO to lift the restrictions without delay.

10. On the western side of the berm, MINURSO military patrols continued to visit and inspect Royal Moroccan Army ground units larger than company size, in accordance with the ceasefire arrangements between MINURSO and the Royal Moroccan Army.

11. As the Council will recall, in April and May 2001, Moroccan military authorities had begun preparations for the construction of an asphalted road in the Guerguerat area of Western Sahara, at the southwestern tip of the Territory, towards the Mauritanian border. Morocco subsequently suspended this activity at the request of several Member States and MINURSO. MINURSO has since conducted regular air and ground reconnaissance in the area (the last air reconnaissance was performed on 26 January 2002 and the last ground reconnaissance on 1 February 2002), but has found no signs of further roadwork being conducted in the area.

D. Civilian police aspects

12. As at 7 February 2002, the strength of the civilian police component of MINURSO stood at 25 officers (see annex), under the command of Inspector General Om Prakash Rathor (India). The civilian police officers continued to perform protective duties with regard to files and sensitive materials at the Identification Commission centres at Laayoune and Tindouf. Training activities, such as briefings by the UNHCR liaison office in Laayoune, continued on the protection content of voluntary repatriation and on international instruments concerning refugees.

E. Preparatory work for the repatriation of the Saharan refugees

13. During the reporting period, UNHCR continued to carry out its mandated responsibilities for the Western Saharan refugees in the Tindouf camps and to coordinate with MINURSO. A senior UNHCR delegation visited the region from 26 January to 2 February 2002 to discuss, after consulting with MINURSO, with Morocco, the Frente POLISARIO, and Algeria, the issue of cross-border confidence-building measures for Saharan refugees. The Government of Morocco assured the UNHCR delegation that it was in principle prepared to accept the proposals made by UNHCR, provided that the implementation modalities were agreed upon at a later stage. The Frente POLISARIO reiterated its position that the implementation of these activities should be carried out only within the context of the settlement plan (S/21360 and S/22464 and Corr. 1). The Government of Algeria, while reiterating its support of the settlement plan, reaffirmed its full cooperation with UNHCR, in particular for the planned implementation of cross-border confidence-building measures, provided that the refugees agreed to it.

14. On 26 January 2002, UNHCR held consultations with the Government of Algeria, WFP, the European Commission Humanitarian Aid Office (ECHO), and its implementing partners to address issues of mutual concern regarding the implementation of its programme in 2002. Owing to financial constraints, the frequent shortages in basic food commodities for Saharan refugees continued to be a major concern for UNHCR. To address this issue, at a meeting it organized together with WFP in Algiers on 29 January 2002, UNHCR launched an appeal for funds sufficient to cover an expected three-month gap in food supplies, pending WFP food shipments. A joint WFP-UNHCR food assessment mission, accompanied by representatives of the host Government and donor countries, visited the Tindouf camps from 1 to 7 February 2002. From 22 to 26 January 2002, UNHCR had conducted another fact-finding mission to monitor the Saharan refugee situation in northern Mauritania.

15. The food shortages faced by Saharan refugees in the Tindouf camps is also a matter of great concern. I once again appeal to the international community to provide generous support to UNHCR and WFP in order to help them overcome the deteriorating food situation

among the refugees. I also strongly appeal to Morocco and the Frente POLISARIO to agree without further delay to fully collaborate with UNHCR in the implementation of the long-overdue confidence-building measures, as initially called for by the Security Council in its resolution 1238 (1999) and then in subsequent resolutions.

F. Prisoners of war, persons unaccounted for and detainees

16. As the Council will recall, on 2 January the Frente POLISARIO announced the release of 115 of the 1,477 Moroccan prisoners of war it was holding. Those prisoners of war were repatriated under the auspices of the International Committee of the Red Cross (ICRC) on 17 January. This action, together with the effort by Morocco to account for some former Frente POLISARIO combatants unaccounted for and the amnesty it granted in November 2001 to 25 Saharan detainees, are steps in the right direction. If continued and accelerated, these gestures will help to bring the parties closer to finally resolving these matters of urgent humanitarian concern.

17. In the meantime, I have asked my Special Representative to maintain regular and close contact with all the parties and to continue to provide assistance to ICRC and UNHCR in the performance of their vital humanitarian tasks. In this regard, I wish to remind the Council that, to date, some 1,362 Moroccan prisoners of war remain held in connection with the Western Sahara conflict, most of them for more than 20 years. More than 10 years after the entry into effect of the ceasefire, their release is long overdue, both under international humanitarian law and commitments that the parties undertook in this regard. It is my hope that members of the Council will once again join me in calling on the Frente POLISARIO to release without further delay all remaining prisoners of war. It is also my hope that both parties will continue to cooperate with the efforts of ICRC to resolve the problem of the fate of all those unaccounted for since the beginning of the conflict.

G. Organization of African Unity

18. The observer delegation of the Organization of African Unity (OAU) to MINURSO, led by the senior

representative of the Organization, Ambassador Yilma Tadesse (Ethiopia), continues to provide valuable support and cooperation to the Mission. I wish to reiterate my sincere appreciation for this contribution.

IV. Other developments

19. On 29 January 2002, the Legal Counsel responded to a letter addressed to him on 13 November 2001 by the President of the Security Council requesting, on behalf of the members of the Council, his opinion on the legality of contracts off-shore Western Sahara concluded by Morocco with foreign oil companies (S/2002/161). In a letter addressed to me, dated 1 February 2002, the Permanent Representative of Algeria expressed his views on this issue (S/2002/144). The representative of the Frente POLISARIO in New York addressed two letters on the same subject to the President of the Security Council on 7 and 18 February, and the Permanent Representative of Morocco expressed his views in his letter of 8 February addressed to the President of the Security Council (S/2002/153).

20. On 24 December 2001, Saharan detainees started a three-week-long hunger strike in the Laayoune prison. Following a series of measures taken by Moroccan authorities to reduce prison overcrowding, including the transfer of detainees to other penitentiaries, the hunger strike subsided. Some Saharan detainees resumed their hunger strike on 24 January, but suspended it again within two days.

V. Financial aspects

21. The General Assembly, by its resolution 55/262 of 14 June 2001, appropriated the amount of \$48.8 million, equivalent to a monthly rate of some \$4.1 million, for the maintenance of MINURSO for the period from 1 July 2001 to 30 June 2002. In connection with the reduction of personnel in the Identification Commission, as well as other related cost reductions, I shall continue to reassess the resource requirements of the Mission and revert to the General Assembly with consequential adjustments, if necessary.

22. As at 31 January 2002, unpaid assessed contributions to the special account for MINURSO amounted to \$60,973,553. The total outstanding

assessed contributions for all peacekeeping operations at that date amounted to \$2,165,678,953.

VI. Assessment of progress and problems since the appointment of my Personal Envoy

23. In my report of 20 June 2001 to the Security Council (S/2001/613), I described in some detail the difficulties that the United Nations had encountered over the past 10 years in its effort to implement the settlement plan, which has resulted in repeated breakdowns in the identification process. After a particularly long impasse in the process, which had lasted from the end of 1995 to the beginning of 1997, upon assuming my functions as Secretary-General I appointed James A. Baker III as my Personal Envoy in March 1997, and asked him to reassess the feasibility of implementing the settlement plan. After a tour of the region, during which he met with the leadership of the two parties and the neighbouring countries, Mr. Baker informed me that, despite the difficulties and delays in the process, neither side had indicated any willingness to pursue any political solution other than the implementation of the settlement plan.

24. My Personal Envoy believed that the only realistic way to assess the feasibility of implementing the plan would be by arranging direct talks between the parties. He was, however, aware that previous efforts by the United Nations over the years to organize such direct talks had not succeeded, mainly because of the reluctance of the Government of Morocco to meet face-to-face with the Frente POLISARIO.

25. When the parties met directly in Lisbon on 23 June 1997, it was the first time in many years that they did so to discuss matters of substance. That meeting lasted only one day as it became apparent that both sides had problems accepting the proposal submitted by my Personal Envoy to bridge their differences on resuming the identification process and both needed to consult with their principals before responding. This was a pattern that was to be repeated during the three other successive rounds of direct talks in 1997. None of the rounds lasted longer than a day and a half, as the parties exhibited great reluctance to agree to the bridging proposals aimed at resolving their differences on the issues separating them and hindering the implementation of the settlement plan. They needed to

break away and meet their principals before returning to the next round with requests for modifications to the proposals. Nevertheless, through the hard work and perseverance of my Personal Envoy and his team, agreement was reached on all issues separating the parties, and during the last round, held at Houston, Texas, from 14 to 16 September 1997, the Houston agreements, allowing for the resumption of the identification process and therefore the implementation of the settlement plan, came into effect.

26. Paragraphs 27 to 29 of my June 2001 report (S/2001/613) describe the difficulties encountered in carrying out and concluding the identification process and enumerate the remaining key unresolved issues of the settlement plan, even after the conclusion of the Houston agreements. As the report points out, since the conclusion of the identification process at the end of 1999, MINURSO has been facing a total of 131,038 appeals, with an appeals process that promises to be even lengthier and more cumbersome and contentious than the identification itself.

27. In view of these developments, early in 2000 I asked my Personal Envoy to undertake new consultations with the parties and neighbouring countries. After a visit to the region from 8 to 11 April, when he undertook preliminary contacts with all concerned, my Personal Envoy informed me that he needed to organize another face-to-face meeting between the parties in order to consider the problems in the implementation of the settlement plan (S/21360 and S/22464 and Corr.1) and the Houston agreements (S/1997/742, annexes I-III), as well as to explore other possible approaches.

28. The first of three such meetings in 2000 was held in London on 14 May. The neighbouring countries, Algeria and Mauritania, also attended. The meeting proved to be inconclusive in resolving the problems separating the parties. At the end, my Personal Envoy invited the parties to come forward at the next meeting with concrete solutions to the multiple problems of the settlement plan that they could both agree to, or else, be prepared to discuss other ways to achieve an early, durable and agreed resolution of their dispute over Western Sahara.

29. During the second meeting, held in London on 28 June 2000, each party identified areas, mainly concerning the appeals process and the repatriation of refugees, that in its view presented difficulties with

respect to the implementation of the plan. However, neither party offered specific proposals to resolve the multiple problems of the settlement plan that both parties could agree to. In addition, my Personal Envoy indicated that, in his view, other issues remained unresolved, such as enforcement of the results of the referendum, release of prisoners of war and Saharan political detainees and possible problems relating to the implementation of the code of conduct for the referendum campaign.

30. In addition, my Personal Envoy expressed concern that the parties had so far failed to negotiate these problems because of the high level of animosity existing between them. In his view, neither party had shown any disposition to depart from the "winner-take-all" mentality or appeared willing to discuss any possible political solutions in which each could get some, but not all, of what it wanted and would allow the other side to do the same. After asking the parties again for concrete proposals to bridge their differences and receiving none, my Personal Envoy expressed the view that the meeting, instead of resolving problems, had in fact moved things backwards, as it had deepened the differences between the parties.

31. Nevertheless, he considered that a political solution was achievable only through direct dialogue between the parties, and asked them to meet again in order to try to arrive at a political solution. It was repeated to the parties that, should they agree to discuss a political solution other than the settlement plan, they would not prejudice their final positions since, according to the rules of the consultations, nothing would be agreed to until everything had been agreed to.

32. The third meeting between the parties under the auspices of my Personal Envoy was held in Berlin on 28 September 2000. During a discussion on the status of the settlement plan, the two parties reiterated their differing positions; both, however, pledged their cooperation with the United Nations. My Personal Envoy pointed out to the parties that he had been hearing the same arguments and pledges of cooperation since 1997 and expressed scepticism about the validity of such pledges.

33. He recalled that, at the start of the meeting, he had asked the parties whether they had come with new positions on any issue. He felt that there was no political will on either side to move forward. He

reiterated that there were many ways to achieve self-determination. It could be achieved through war or revolution; it could be achieved through elections, but this required good will; or it could be achieved through agreement, as had been done by parties to other disputes. When asked by my Personal Envoy whether they would be willing to try the latter route without abandoning the settlement plan, both parties reiterated their commitment to the plan. They expressed fundamental differences and perceptions as to its correct implementation, however.

34. My Personal Envoy then suggested that the parties explore ways to move the appeals process forward, as the Frente POLISARIO wished, and at the same time search for a mutually acceptable political solution, as the Security Council had requested in resolution 1309 (2000). The Moroccan delegation pointed out that the question of appeals had been extensively covered and was exhausted. In Morocco's view, that issue was deadlocked, not on technicalities, but on principles.

35. My Personal Envoy then asked the parties whether, without abandoning the settlement plan, they would be willing to pursue a political solution that might or might not be confirmed by a later referendum. The Frente POLISARIO responded that it was not ready to discuss anything outside the settlement plan. For its part, the Moroccan delegation stated that it was prepared to initiate a sincere and frank dialogue with the Frente POLISARIO, with the assistance of my Personal Envoy, to work out a lasting and definitive solution that would take account of Morocco's sovereignty and territorial integrity, and the specifics of the region, in compliance with the democratic and decentralization principles that Morocco wished to develop and apply, beginning with the Saharan region.

36. The Frente POLISARIO rejected the Moroccan proposal and reiterated that it would cooperate and adhere to any dialogue that would be within the framework of the settlement plan.

37. At the conclusion of those consultations, my Personal Envoy was of the view, which I shared, that further meetings of the parties to seek a political solution could not succeed, and indeed could be counterproductive, unless the Government of Morocco as administrative power in Western Sahara was prepared to offer or support some devolution of governmental authority, for all inhabitants and former

inhabitants of the Territory, that would be genuine, substantial and in keeping with international norms.

38. It was almost six months later, during the spring of 2001, that my Personal Envoy was able to determine that Morocco as administrative power in Western Sahara was prepared to support a draft framework agreement (S/2001/613, annex I) on the status of Western Sahara which envisaged a devolution of authority to the inhabitants of the Territory with final status to be determined by a referendum five years later. Once he ascertained the willingness of the Government of Morocco to support the draft framework agreement, my Personal Envoy presented it to the Government of Algeria and to the Frente POLISARIO. The Security Council had an opportunity to see for itself the views of the Government of Algeria and the Frente POLISARIO, which were annexed to my report (S/2001/613, annexes II and IV).

39. In view of the strong reservations expressed by the Government of Algeria and the unwillingness of the Frente POLISARIO to consider the draft framework agreement, the Security Council in its resolution 1359 (2001) supported my proposal to invite all the parties to meet directly or through proximity talks under the auspices of my Personal Envoy to discuss the framework agreement and to negotiate any specific changes that they would like to see in it. The Council also encouraged the parties to discuss any other proposal for a political solution, which might be put forward by the parties, to arrive at a mutually acceptable agreement. The Council affirmed in its resolution that while those discussions would go on, the proposals submitted by the Frente POLISARIO to overcome the obstacles preventing implementation of the settlement plan would be considered.

40. Following the adoption of resolution 1359 (2001), my Personal Envoy met with high-level representatives of the Frente POLISARIO and the Governments of Algeria and Mauritania at Pinedale, Wyoming, in August 2001. Neither the Government of Algeria nor the Frente POLISARIO was willing to engage in a detailed discussion of the draft framework agreement, notwithstanding indications of flexibility by the Government of Morocco conveyed to them by my Personal Envoy. In view of the responses that my Personal Envoy has received from the Government of Algeria and the Frente POLISARIO, which rejected the draft framework agreement (S/2002/41, annexes I and II), he does not see any real chance that the parties will

ultimately voluntarily agree to this approach to solve their dispute over Western Sahara. He is also of the view, which I share, that the proposal submitted by Algeria in lieu of the draft framework agreement, by which the United Nations would assume sovereignty over Western Sahara in order to implement provisions that appear identical to those of the settlement plan, has no more chance than the settlement plan of bringing about an early, durable and agreed resolution of the conflict over Western Sahara.

41. Thereafter, as indicated in paragraph 2 above, my Personal Envoy met with President Bouteflika and high-level officials of the Government of Algeria on 2 November 2001 at the James Baker Institute in Houston, Texas, and then twice with King Mohammed VI and high-level officials of the Government of Morocco in Morocco on 24 and 25 January 2002.

42. At my request, my Personal Envoy agreed almost five years ago to try to assist in finding a solution to the dispute over Western Sahara. As this and my prior reports to the Security Council demonstrate, he has worked tirelessly during that period. He has recently reaffirmed to me his disappointment at the lack of progress towards finding a solution to the problem of Western Sahara — a solution which is sorely needed for long-term peace, stability and prosperity in the Maghreb region.

VII. Observations and recommendations

43. Despite their assertions to the contrary, the parties have not been willing to fully cooperate with the United Nations either to implement the settlement plan or to try to negotiate a political solution that will bring about an early, durable and agreed resolution of their dispute over Western Sahara.

44. As indicated in my report of June 2001 (S/2001/613, para. 52), my Personal Envoy is of the view, on the basis of the assessment of the United Nations work over the past 10 years in trying to implement the settlement plan, including the almost five years during which he has been involved, that it is highly unlikely that the settlement plan can be implemented in its present form in a way that it will achieve an early, durable and agreed resolution of the dispute over Western Sahara.

45. My Personal Envoy is of the view that, notwithstanding indications from Morocco of a willingness to negotiate, it is pointless to pursue at this time, except as provided in paragraph 49 below, any more discussion on the draft framework agreement, as neither the Government of Algeria nor the Frente POLISARIO is willing to engage in discussing it.

46. My Personal Envoy is also of the view that, notwithstanding indications from Algeria and the Frente POLISARIO of a willingness to negotiate a possible division of the Territory, it is pointless to pursue at this time any such discussions, except in the manner provided in paragraph 50 below, as the Government of Morocco is unwilling to discuss such an approach, even though it reached a similar agreement with the Government of Mauritania in 1976. I concur with the views of my Personal Envoy as expressed in paragraphs 44, 45 and the present paragraph.

47. We are currently faced with a rather bleak situation with regard to the future of the peace process in Western Sahara. My Personal Envoy and I believe there are four options for consideration by the Security Council in the light of the above pessimistic but realistic assessment.

48. As a first option, the United Nations could, once again, resume trying to implement the settlement plan, but without requiring the concurrence of both parties before action could be taken. This effort would begin with the appeals process but, even under this non-consensual approach, the United Nations would in the years ahead face most of the problems and obstacles that it has faced during the past 10 years. Morocco has expressed unwillingness to go forward with the settlement plan; the United Nations might not be able to hold a free and fair referendum whose results would be accepted by both sides; and there would still be no mechanism to enforce the results of the referendum. Under this option, the Identification Commission of MINURSO would be reinforced and indeed the overall size of the operation would be increased.

49. As a second option, my Personal Envoy could undertake to revise the draft framework agreement, taking into account the concerns expressed by the parties and others with experience in such documents. However, in this event, my Personal Envoy would not seek the concurrence of the parties as has been done in the past with respect to the settlement plan and the

draft framework agreement. The revised framework agreement would be submitted to the Security Council, and the Council would then present it to the parties on a non-negotiable basis. Should the Security Council agree to this option, MINURSO could be downsized further.

50. As a third option, the Security Council could ask my Personal Envoy to explore with the parties one final time whether or not they would now be willing to discuss, under his auspices, directly or through proximity talks, a possible division of the Territory, with the understanding that nothing would be decided until everything was decided. Were the Security Council to choose this option, in the event that the parties would be unwilling or unable to agree upon a division of the Territory by 1 November 2002, my Personal Envoy would also be asked to thereafter show to the parties a proposal for division of the Territory that would also be presented to the Security Council. The Council would present this proposal to the parties on a non-negotiable basis. This approach to a political solution would give each party some, but not all, of what it wants and would follow the precedent, but not necessarily the same territorial arrangements, of the division agreed to in 1976 between Morocco and Mauritania. Were the Security Council to choose this option, MINURSO could be maintained at its present size, or it could be reduced even more.

51. As a fourth option, the Security Council could decide to terminate MINURSO, thereby recognizing and acknowledging that after more than 11 years and the expenditure of sums of money nearing half a billion dollars, the United Nations is not going to solve the problem of Western Sahara without requiring that one or the other or both of the parties do something that they do not wish to voluntarily agree to do.

52. I am aware that none of the above-mentioned options will appear ideal to all the parties and interested countries. In order to give the Security Council time to decide, I recommend that the mandate of MINURSO be extended for two months, until 30 April 2002.

Annex

United Nations Mission for the Referendum in Western Sahara: contributions as at 7 February 2002

	<i>Military observers</i>	<i>Force commander</i>	<i>Troops</i>	<i>Civilian police*</i>	<i>Total</i>
Argentina	1				1
Austria	3				3
Bangladesh	9				9
Belgium		1			1
China	16				16
Egypt	19				19
El Salvador	4				4
France	25				25
Ghana	8		7	3	18
Greece	1				1
Guinea	3				3
Honduras	12				12
Hungary	6				6
Ireland	3				3
India				2	2
Italy	5				5
Jordan				5	5
Kenya	9				9
Malaysia	13				13
Nigeria	6			3	9
Norway				2	2
Pakistan	6			2	8
Poland	5				5
Portugal	4			4	8
Republic of Korea			20		20
Russian Federation	25				25
Senegal				3	3
Sweden				1	1
Uruguay	13				13
United States of America	7				7
Total	203	1	27	25	256

* Authorized strength is 81.

MAP

Appendix 7

UN News Centre: Security Council extends mandate of UN's Western Sahara Mission
Through July 30 April (2002)

Security Council extends mandate of UN's Western Sahara mission through July

30 April – The United Nations Security Council today extended the mandate of the UN Mission for the Referendum in Western Sahara (MINURSO) until 31 July to allow time to examine proposals by Secretary-General Kofi Annan on breaking the current impasse over the territory.

The Council set up MINURSO in 1991 to implement a Settlement Plan between Morocco and the Frente POLISARIO aimed at allowing the people of the territory to participate in a referendum to determine whether Western Sahara should be independent or integrated with Morocco. Despite extensive preparations, the conditions for holding the referendum have never been met.

In his latest report on the situation, the Secretary-General expressed hope that the Council would soon decide "how it wishes to proceed with regard to the future of the peace process in Western Sahara."

In a previous report to the Council, Mr. Annan had presented four options to overcome the stalemate. The first would have the UN resume trying to implement the 1988 settlement plan, even without the concurrence of the two parties, the Frente POLISARIO and Morocco. The second would have Mr. Annan's Personal Envoy, James Baker III, try to revise the draft Framework Agreement - again without necessarily gaining the agreement of the parties. The third option would be to mandate Mr. Baker to discuss a possible division of the territory with interested parties, and the fourth would see the Council terminate MINURSO due to the lack of progress.

Meanwhile, in another development today, a UN spokesman refuted press reports that Mr. Baker, had stated that he would resign if the Council did not give him a mandate to work on revising the draft framework agreement.

Mr. Baker "favours any option that will give him a clear mandate and which will have the support of the Security Council," spokesman Fred Eckhard said in a statement to the press. "He is of the view that any option that the Security Council chooses, should give the Secretary-General and his Personal Envoy sufficient authority to try and resolve the long-standing conflict over Western Sahara."

Source: UN News Centre